

Transcript of the Testimony of  
**Douglas Kruse**

**Date:**

May 03, 2022

**Case:**

LA UNIoN DEL PUEBLO ENTERO vs GREGORY W. ABBOTT

Douglas Kruse

May 03, 2022

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LA UNIÓN DEL PUEBLO ENTERO, )

et al., )

Plaintiffs, )

v. )

Case No. 5:21-cv-844-XR

[LEAD CASE]

GREGORY W. ABBOTT, et al., )

Defendants. )

OCA-GREATER HOUSTON, et al., )

Plaintiffs, )

v. )

Case No. 1:21-cv-780-XR

JOHN SCOTT, et al., )

Defendants. )

HOUSTON JUSTICE, et al., )

Plaintiffs, )

v. )

Case No. 5:21-cv-848-XR

GREGORY WAYNE ABBOTT, et al., )

Defendants. )

LULAC TEXAS, et al., )

Plaintiffs, )

v. )

Case No. 1:21-cv-0786-XR

JOHN SCOTT, et al., )

Defendants. )

MI FAMILIA VOTA, et al., )

Plaintiffs, )

v. )

Case No. 5:21-cv-0920-XR

GREG ABBOTT, et al., )

Defendants. )

Douglas Kruse

May 03, 2022  
Page 2

1 UNITED STATES OF AMERICA, )  
Plaintiff, )  
2 )  
v. ) Case No. 5:21-cv-1085-XR  
3 )  
THE STATE OF TEXAS, ET AL., )  
4 Defendants. )

5  
6 ORAL DEPOSITION OF  
DR. DOUGLAS L. KRUSE  
MAY 3, 2022  
7 (Reported Remotely)

8 -----  
9 Oral deposition of Dr. Douglas L. Kruse, produced as an  
10 expert witness at the instance of the State Defendants, and  
11 duly sworn, was taken in the above-styled and numbered cause on  
12 May 3, 2022, from 10:04 a.m. to 6:57 p.m., before Carmen R.  
13 Yarbrough, CSR in and for the State of Texas, reported by oral  
14 stenography method, pursuant to the Texas Rules of Civil  
15 Procedure, and the provisions stated on the record or attached  
16 hereto.  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 joined today by my colleague, Ari Herbert, who will be  
2 reviewing the matter but not participating in terms of asking  
3 you questions.

4 Can you please state and then spell your name for the  
5 record?

6 A. My name is Douglas Kruse. The last name is  
7 K-R-U-S-E; first name, D-O-U-G-L-A-S.

8 Q. Dr. Kruse, I'm going to start with some instructions  
9 and introductory questions. Then, after that's done, I'll move  
10 on to the main subject of the deposition. Okay?

11 A. Okay.

12 Q. Have you ever been deposed before?

13 A. No.

14 Q. But you understand that you are under oath. Correct?

15 A. Yes.

16 Q. You also understand that the oath has the same legal  
17 significance as if you were testifying before an open court?

18 A. Yes.

19 Q. So the court reporter, we're going to need you to  
20 provide verbal answers like yes or no, as opposed to gestures,  
21 such as nodding or shaking your head. This is extra important  
22 here today, because we're all participating through Zoom, and  
23 so there's a chance that we may not be able to see your  
24 gestures and the court reporter may not be able to see your  
25 gestures. Does that make sense?

1 penalty of perjury that the foregoing is true and correct to  
2 the best of my knowledge, information, and belief." Did I read  
3 that correctly?

4 A. Yes.

5 Q. The declaration continues, "I am aware that discovery  
6 in this case is ongoing, and I reserve the right to continue to  
7 supplement the foregoing report in light of additional facts,  
8 testimony, and/or materials that may come to light." Did I  
9 read that correctly?

10 A. Yes.

11 Q. And finally, we have this line that says, "Executed  
12 this February 28, 2022 in Mercer County, New Jersey." Did I  
13 read that correctly?

14 A. Yes.

15 Q. Do you still affirm that Exhibit A is a true and  
16 accurate copy of your February 28, 2022 report?

17 A. Yes.

18 Q. Do you still affirm that the report describes the  
19 primary data and other information you considered in forming  
20 your opinions?

21 A. Yes.

22 Q. Do you affirm that the facts, observations,  
23 conclusions, within your report remain true and correct to the  
24 best of your knowledge, information, and belief?

25 A. Yes.

1 Q. Does this report --

2 A. And actually -- can I just amend that? I did  
3 discover a couple of typos. They are being corrected.

4 Q. Understood. If it makes you feel any better, when I  
5 put the deposition notice up, I also noticed a typo. And that  
6 was certainly embarrassing on my part to only notice it today,  
7 as opposed to yesterday when I issued it to counsel.

8 A. It happens.

9 Q. It does. Does this report and the contents therein  
10 reflect the expert opinion that Plaintiffs have retained you to  
11 provide in this case?

12 A. Yes.

13 Q. And you have not submitted the supplements report in  
14 this case. Is that correct?

15 A. Correct.

16 Q. And so the report on screen, a copy of which is in  
17 front of you, is the only expert report you have tendered in  
18 this case?

19 A. Yes.

20 Q. And so this expert report contains the entirety of  
21 the expert opinions you are offering in this case. Correct?

22 A. Yes.

23 Q. At the bottom of the page two, you'll see a signature  
24 line with the printed words "Douglas L. Kruse, PhD." Do you  
25 see that?

1 A. Yes.

2 Q. And do you see the signature above?

3 A. Yes.

4 Q. Is that your signature?

5 A. Yes.

6 Q. Is it fair to say that you executed and submitted  
7 report on February 28, 2022?

8 A. Yes.

9 Q. So I have a couple of pro forma questions that I'm  
10 going to ask you, a little bit similar to what I had just  
11 stated. Did you write the report that you submitted on behalf  
12 of Plaintiffs on February 28, 2022?

13 A. I wrote the report before February 28th, but yes, I  
14 wrote the report that was submitted on February 28th.

15 Q. Thank you for the clarification. My question could  
16 have used a little bit more clarity. Did anyone else, besides  
17 yourself, help you draft the language you used in your report?

18 A. Yes.

19 Q. Who was that?

20 MS. SWEREN-BECKER: Objection. Privilege and rule  
21 26. I'm going to instruct the witness not to answer.

22 Q. (BY MS. HUNKER) [unintelligible] -- help you draft  
23 the language?

24 A. Yes.

25 Q. And who was that?

1 researchers will include additional information in the  
2 footnotes that's not necessarily in the content of the report  
3 itself, and I was just seeking to determine whether you were  
4 somebody who used that method, or if you were somebody who only  
5 used footnotes in reference to materials whose contents are in  
6 the report.

7 A. Right. Okay. I understand. Yeah.

8 Q. Did you rely on any sources while preparing your  
9 report that did not make it into the footnotes we just  
10 discussed?

11 A. No. I mean, of course, I've read a lot of material  
12 relevant to this, but I did not use -- all of the information  
13 that I rely on in the report has been referenced --  
14 appropriately referenced in the sites.

15 Q. So to be clear, there is nothing in the report that  
16 cannot be traced back to the sources cited in the reports  
17 footnote?

18 A. Correct.

19 Q. And your conclusions, are they based entirely on the  
20 information found within the sources cited in the reports  
21 footnote?

22 A. Yes.

23 Q. So we're going to turn to the next page, which is  
24 page four of your report. And it says for your purpose of  
25 engagement, "I have been retained by Plaintiffs to provide my



1 Do you see how each paragraph summarizes your findings with  
2 respect to particular sections of SB 1?

3 A. Yes.

4 Q. You do not tender in your report observations and  
5 findings on any other section of SB 1. Correct?

6 A. Correct.

7 Q. So according to this, you tendered in your report,  
8 observations and findings on sections 5.02, 5.03, 5.06, 5.07,  
9 5.10, 5.01, 6.04, 6.03, 6.05, 6.06, and 7.04. Is that correct?

10 A. Yes.

11 Q. And so you do not offer an opinion in the report  
12 about how any other provision of SB 1, besides the provisions  
13 I've just listed, affect voters with disabilities. Is that  
14 correct?

15 A. Correct.

16 Q. Thus when you state issues related to the ways in  
17 which SB 1 erects barriers that harm voters with disabilities  
18 by impeding their access to voting in the State of Texas,  
19 you're referring specifically to the issues that stem from  
20 these provisions. Is that correct?

21 A. Correct.

22 Q. So before I move on, I want to make sure that we have  
23 a complimentary understanding of some of the terms that you use  
24 in the report and that I might use during the deposition. Do  
25 you understand that if I say Senate Bill One or SB 1, I'm

1 referring to the omnibus election legislation at issue in this  
2 case, which was enacted during the second special session of  
3 the 87th Legislature?

4 A. Yes.

5 Q. And I wanted the clarification just because with the  
6 name Senate Bill One, there happens to be a Senate Bill One  
7 every time the legislature convenes.

8 A. I understand. Yes.

9 Q. Now in paragraph 27, you provide the definition of  
10 disabilities. Is that correct?

11 A. I repeat the definition of disability used in the  
12 ADA. Yes.

13 Q. And you state, "The ADA protects all those with a  
14 substantial limitation in one or more major life activities."  
15 Did I read that correctly?

16 A. Yes.

17 Q. You then cite guidance from the Department of  
18 Justice, which states, "The term 'substantially limits' shall  
19 be construed broadly in favor of expansive coverage to the  
20 maximum extent permitted by the terms of the ADA. The  
21 comparison of an individual's performance of a major life  
22 activity to the performance of the same major life activity by  
23 most people in the general population usually will not require  
24 scientific medical, or statistical evidence." Did I read that  
25 correctly?

1 A. Yes.

2 Q. When you use the term "disability" in your report,  
3 are you referring to this definition of disability under the  
4 ADA?

5 A. Yes.

6 Q. Is there any time in the report when you use the term  
7 disability that you're not referring to the ADA definition?

8 A. No.

9 Q. And so when you're referring to a voter with a  
10 disability, you're referring to a voter with a substantial  
11 limitation in one or more major life activities. Is that  
12 correct?

13 A. Yes.

14 Q. We covered this a little bit, but I just want to get  
15 some clarity. You have in your declaration this statement:  
16 "Within the last four years, I have not provided reports as an  
17 expert witness or court monitor in any cases." Did I read that  
18 correctly?

19 A. Yes.

20 Q. You also stated earlier that you have not testified  
21 before. Is that correct?

22 A. Correct.

23 Q. And so you've not testified before as an expert  
24 witness. Is that correct?

25 A. I've not testified. Correct.

1 assumptions about the wait times for taxi cabs -- accessible  
2 and non accessible taxi cabs in New York. My methods were a  
3 bit more complicated in that report.

4 In this report, it's really just simple means,  
5 proportions, and cross tabs. So there's nothing -- there are  
6 no fancy statistics in this report. It's all very -- very  
7 straightforward in the current report.

8 Q. Understood. And in that case, did any party submit a  
9 motion seeking to exclude the report?

10 A. Not that I know of.

11 Q. I want to turn to page four again.

12 A. Okay.

13 Q. And you provide here a ten paragraph summary of your  
14 credentials. Is that correct?

15 A. Yes.

16 Q. You then attached on page 45 a curriculum vitae that  
17 lists your education, employment, and publications. Is that  
18 right?

19 A. Yes.

20 Q. I want to spend a short while going over your  
21 credentials for the sake of the record. Can you please give me  
22 a summary of your educational background, starting with  
23 undergraduate degree and proceeding from there?

24 A. My undergraduate degree is from Harvard College in  
25 Cambridge, Massachusetts. I majored in economics there. I

1 then received a master's degree in economics from the  
2 University of Nebraska Lincoln, along with a certification in  
3 public policy analysis and program evaluation. I then returned  
4 to Harvard and received my PhD in Economics in 1988.

5 Q. And did you pursue any other coursework where you did  
6 not secure a degree?

7 A. No.

8 Q. And so we look at paragraph two. It says you are  
9 currently a distinguished professor in the School of Management  
10 and Labor Relations at Rutgers University. Is that still  
11 correct?

12 A. Yes.

13 Q. And how long have you been employed there?

14 A. I have been employed since 1988 back when my hair was  
15 still brown. Being an extinguished professor has turned my  
16 hair gray.

17 Q. And so I assume, based on the length of time, that  
18 you have tenure at this university. Is that correct?

19 A. Yes.

20 Q. And what type of courses have you taught while at  
21 Rutgers?

22 A. I have taught mainly economics courses at the  
23 undergraduate, masters, and PhD level. I've also taught some  
24 research methods courses.

25 Q. And so if we look at the last sentence in this

1 I am Co-Director of the Program for Disability Research, and am  
2 Associate Director of the Institute for the Study of Employee  
3 Ownership and Profit Sharing." Did I read that correctly?

4 A. Yes.

5 Q. What type of research does the program for Disability  
6 Research conduct?

7 A. The program does a variety of research on the  
8 economic, political, and social inclusion of people with  
9 disabilities. The focus really has been in two areas. One is  
10 employment opportunities for people with disabilities, and the  
11 second is on political participation, including voting of  
12 people with disabilities. Those are the two main focus areas  
13 of the program.

14 Q. And as co-director, what kind of responsibilities do  
15 you have?

16 A. I work with the other co-director in applying for  
17 grants; and then once we get the grants, doing the research,  
18 writing the reports and so forth. And I should add, we also  
19 do -- we also get quite a bit of publicity and we talk to  
20 journalists quite a bit. We've had over 300 unique press hits  
21 in the past -- in the past six years.

22 Q. Congratulations.

23 A. Thank you.

24 Q. So you gave two topics: Employment and political  
25 participation. Does your research focus on one more than the

1 other?

2 A. I would say it's pretty well split 50/50.

3 Q. So if we go to paragraph seven, I'm going to look at  
4 the second sentence in particular. It reads, "I have been  
5 principal investigator (PI) or Co-PI on four grant-funded  
6 national post-election surveys on the voting experiences of  
7 people with and without disabilities." Did I read that  
8 correctly?

9 A. Yes.

10 Q. And it continues, "Two of these surveys were funded  
11 by the U.S. Election Assistance Commission." Did I read that  
12 correctly?

13 A. Yes.

14 Q. And so, what elections did these particular surveys  
15 focus on?

16 A. That was -- the first survey was a post-election  
17 survey after the 2012 national elections, and the second was  
18 after the 2020 national elections.

19 Q. So those were the two that were funded by the US  
20 Election Assistance Commission. Is that right?

21 A. Yes.

22 Q. And what about the other two grant-funded national  
23 post-election surveys? Were they on the same elections, or  
24 were they on different elections?

25 A. They were on different elections.

1 Q. Which ones?

2 A. Oh, the -- there was one. The first one was after  
3 the 1998 elections, and the second one was after the 2000  
4 elections.

5 Q. So those are from a much older data set, I assume?

6 A. Yeah. The 1998 was our very first time in doing a  
7 national post-election survey. It was actually the first that  
8 anyone had ever done on disability and voting in an election.

9 Q. And did you see improvements between the '98 and 2000  
10 study, and then when you did the 2012 and 2020 study?

11 A. Improvements in?

12 Q. Access to voting for individuals with disabilities.

13 A. The 1998 and 2000 surveys were not focused on access.  
14 I don't think we had any questions on access at that point. We  
15 were mainly interested in looking at the -- the relative  
16 turnout of people with and without disabilities, and the  
17 factors that political scientists have used to explain turnout.  
18 So we were really trying to drill down to the gap. We did  
19 not -- as I say, I don't think we had any questions on access  
20 there. We did not address questions of access until the 2012  
21 survey funded by the EAC.

22 Q. And so, 2020 was the first one you looked at access.  
23 Is that right? Of these --

24 A. 2012.

25 Q. 2012?



1 A. 2012. Yeah.

2 Q. And did you see a change in turnout among individuals  
3 with disabilities between the 1988 and 2000 study, and the 2012  
4 and 2020 study?

5 A. We think so, which sounds like a -- well, it's a very  
6 cautious response. The measure of disability changed slightly,  
7 and even slight changes in the measurement of disability can  
8 make a big difference. In 2012, we wanted to use the Census  
9 Bureau's six questions that they had adopted in 2008, so we  
10 revised our questions to match the Census Bureau's questions in  
11 2012. That means that it's -- the numbers between 1998 and  
12 2000 versus 2012 may not be strictly comparable. As best we  
13 can tell the relative turnout improved of people with  
14 disabilities.

15 Q. That's good to hear. And looking at the 2012 versus  
16 2020, did you see improvement in turnout?

17 A. Yeah. We saw a slight decrease in the disability  
18 turnout gap, but it wasn't a statistically significant  
19 decrease.

20 Q. And you had said that you started looking at  
21 accessibility in 2012 and that was the first time. Is that  
22 correct?

23 A. You're fading in and out here.

24 Q. Okay. Let me rephrase then.

25 A. Sure.

1 vary by demographic characteristics, and employment status, and  
2 so forth.

3 Q. And you said 80,000 to 90,000 across the country. Is  
4 that right?

5 A. Yes.

6 Q. And does it -- when you were saying breaking down  
7 different demographics, did those fact sheets and surveys look  
8 at state specific information or is it national only?

9 A. There is a state variable in the -- in the current  
10 population survey that we use to generate state estimates. The  
11 state estimates are subject to more error because the sample  
12 size is obviously smaller for the individual states than for  
13 the entire United States. We do produce a page that contains  
14 the breakdowns by state, along with estimates of whether the  
15 disability gap is outside the margin of error or not.

16 Q. And so when you talk about the smaller sample size  
17 for states, how small are we talking? Is it pretty -- let me  
18 back up a second. When they do the -- yeah, I'll keep it at  
19 that question. What are the sample sizes we're looking at for  
20 these states?

21 A. It varies quite a bit by state, obviously. On  
22 average, it would be -- about 90,000 divided by 50 -- so, it  
23 would be a little less than a couple thousand per state.

24 Q. And so when they're looking to see for that 80,000 or  
25 90,000, are they trying to base it in proportion to the

1           The article, "Enabling Democracy: Disability and  
2   Voter Turnout," it was published in Political Research  
3   Quarterly, was really -- going to sound very immodest here but  
4   it was a -- it was a pretty pathbreaking article. It got a  
5   major prize from the Western Political Science Association,  
6   because it was really the first article that did a thorough  
7   analysis on disability and voter turnout, and it's become a  
8   kind of standard cite on this issue.

9           The other article I point to is "Disability and  
10   Election Policies and Practices," in the book The Measure of  
11   American Elections, published in 2014. That was a very  
12   thorough substantive analysis, particularly looking at vote by  
13   mail systems in states, and the effects of that on turnout of  
14   people with and without disability comparing in particular the  
15   no excuse versus the excuse required states for voting by mail.

16          Q.   And your more recent works, do they also analyze  
17   voting by mail?

18          A.   I'm sorry? My most recent works?

19          Q.   Your more recent articles, do any of them address  
20   voting by mail?

21          A.   No. None of the published work, no. We've looked at  
22   that in some reports we've done but not that have been  
23   published in the peer reviewed journals.

24          Q.   So you also testified before Congress on multiple  
25   occasions. Is that right?

1 Q. And looking at these reports, do any of them address,  
2 again, information specific to Texas for analysis that's  
3 specific to Texas?

4 A. In our fact sheets, on disability voter turnout, we  
5 do have a page, as I indicated earlier, where we break out the  
6 disability -- the turnout of people with and without  
7 disabilities in each state and that, of course, includes Texas.

8 Q. And so outside of turnout numbers, which we talked  
9 about earlier, are there any other Texas specific data that's  
10 addressed in these reports?

11 A. No.

12 Q. And did any of these reports look at mail-in voting?

13 A. We always have a -- in each of our fact sheets on  
14 disability and voter turnout, we have a table looking at  
15 mail-in voting nationally. We present the national numbers on  
16 how many people with disabilities voted by mail versus how many  
17 people without disabilities voted by mail, how many voted  
18 early, and then the connection between those two -- the  
19 overlap, I mean.

20 Q. So you mentioned with turnout that you have a page  
21 that breaks it down by state. Do you have a comparable page  
22 that breaks out mail-in voting by state?

23 A. No.

24 Q. So the mail-in voting sections of the fact sheets are  
25 just looking at national numbers. Is that right?

1 of these look at Texas specific information for conducting  
2 Texas specific analysis?

3 A. No, they -- I mean, obviously, the Texas data is  
4 included in the national figures, but we do not conduct Texas  
5 specific analysis.

6 Q. And for disability and voting accessibility in the  
7 2020 election, did you look at mail-in voting?

8 A. Yes.

9 Q. What was the extent of the -- your inquiry into  
10 mail-in voting here?

11 A. I'm sorry? The extent of my inquiry?

12 Q. Like how -- how substantial is it make-up part of  
13 this report?

14 A. We have several tables -- three or four tables  
15 devoted to analyzing voting by mail in the report, both looking  
16 at the overall rates of voting by mail and also the  
17 difficulties that people encountered in voting by mail; and the  
18 assistance that they required.

19 Q. And has this report been published?

20 A. Yes, it was -- it was issued and released by the  
21 Election Assistance Commission on February -- I believe it was  
22 February 18 of last year.

23 Q. Of 2021?

24 A. Yeah. Yes.

25 Q. And the grant "Disability and Assistive Technology",

1 A. Great.

2 Q. So, let's scroll to page -- sorry, to paragraph 17 --  
3 or 16, 17, and 18 is what we're going to be looking at.

4 A. Okay.

5 Q. Okay. So, if we look at 18, it says, well, specific  
6 data on voting disability -- sorry. Let me repeat that. It

7 reads, "While specific data on voting difficulties by

8 disability status are not available in Texas, national data

9 show a high rate of voting difficulties among people with

10 disabilities." Did I read that correctly?

11 A. Yes.

12 Q. Is it fair to say then that when you are doing an

13 analysis of voting difficulties, you are referring to national

14 data as opposed to anything that is Texas specific?

15 A. When the data are Texas specific, I mentioned that

16 explicitly; and otherwise, I use the term national.

17 Q. So except where it specifically mentions Texas, the  
18 data you rely on is national data?

19 A. Yes, but I believe I always specify national when --  
20 when it's not specific to Texas.

21 Q. So if you look at paragraph 17, it says, "Among Texas

22 voters in 2020, 30.2% of people with disabilities and 8.2% of

23 people without disabilities voted using a mail-in ballot." Did

24 I read that correctly?

25 A. Yes.

1 Q. And how was this determined?

2 A. This was based on the Census Bureau's Current  
3 Population Survey Voting and Registration Supplement that I  
4 referred to before. They had a sample size of 4290 people  
5 eligible to vote in Texas. Based on that, we come up -- we  
6 came up with the percent who voted, and then among those who  
7 voted, what percent voted by mail.

8 Q. When you were looking at this, you said you relied on  
9 the American Community Survey. Is that right?

10 A. No. The Current Population Survey Voting and  
11 Registration Supplement.

12 Q. My apologies. I misheard you.

13 A. No, no problem.

14 Q. So you have not done assessment of teams -- when I  
15 say teams, I mean the Texas voter database -- to determine the  
16 number of people who voted by mail, or the number of people who  
17 voted by mail marking disability as the reason?

18 A. No. I did look at some data that was provided for  
19 Dallas and El Paso -- data on people -- on people who requested  
20 absentee ballots. It turns out the number who indicated  
21 disability as the primary reason that they -- as the reason  
22 that they requested an absentee ballot was too small for  
23 meaningful analysis. It was 100 people in one database and 50  
24 in the other, and that was just not enough. The vast majority  
25 of the people mentioned old age as a reason for the absentee

1 analyzed the surveys that already existed?

2 A. Yes.

3 Q. And so you did not conduct an independent survey of  
4 voters with disabilities. Is that correct?

5 A. Not for this report, no. We draw on the findings  
6 from the Election Assistance Commission sponsored report that  
7 we did following the 2020 elections. We conducted that, but I  
8 don't -- I did not do any analysis of that for this report. I  
9 just drew on the report that we gave to the Election Assistance  
10 Commission that was issued in February of last year.

11 Q. All right. You're right. I should have been a  
12 little bit more specific. So you did not conduct an  
13 independent survey of voters with disabilities for the purposes  
14 of this report?

15 A. Correct.

16 Q. And you did not conduct the independent survey of  
17 voters with disabilities in Texas for the purposes of this  
18 report. Correct?

19 A. Correct.

20 Q. And as you said, you instead summarized the findings  
21 of six nationally representative surveys and then assess how  
22 these findings apply in the context of SB 1. Is that correct?

23 A. Yes.

24 Q. And so you say three of these surveys are conducted  
25 by the US Census Bureau; the American Community Survey, the



1 projecting the number of eligible voters, we make adjustments  
2 for those in correctional facilities using other data as we  
3 make -- the other data from the correctional system. But  
4 that's when we make projections of the number of likely vote --  
5 people who are likely to be eligible to vote. But I should  
6 say, we don't -- the ACS does not have voting information in  
7 it, so we don't -- we're not able to derive any numbers,  
8 specifically, on voting from the ACS.

9 Q. And so anytime that you're talking about voters in  
10 institutional settings, you're weighting the numbers to account  
11 for the fact that you may have a large non-eligible population  
12 within correctional facilities? If I'm using the wrong term,  
13 please let me know.

14 A. We are excluding, yes. We're excluding those who  
15 are -- one sec, let me think about that. I have to think back  
16 to when we -- when I was creating the program for this. We do  
17 make adjustments to exclude those who are in correctional  
18 facilities --

19 Q. Okay.

20 A. -- from those who are eligible to vote.

21 Q. You also talk about how ACS has the largest sample  
22 size. Is that right?

23 A. Yes.

24 Q. I believe you had mentioned the number but I can't  
25 recall offhand. Can you tell me what the rough sample size is

1 for the ACS?

2 A. It's a sample of 1% of the US population each year,  
3 which is roughly 3 million people; that's of all ages, of  
4 course. The voting age of the eligible citizens is closer to 2  
5 million.

6 Q. You also mentioned in paragraph 30 that ACS and CPS,  
7 which is the current population survey, they have measures both  
8 of age and citizenship, so you limit the sample size. Is that  
9 right? Of the eligible population?

10 A. Yes.

11 Q. But not all of the reports do have that information.  
12 Is that correct?

13 A. Correct.

14 Q. So, how do you account for that when you're doing  
15 your analysis?

16 A. The two data sets that can include noncitizen where  
17 there is not a citizenship measure is the SIPP and NHTS -- the  
18 Survey of Income and Program Participation and the National  
19 Highway -- Highway Travel Survey -- is that it? Yeah. They  
20 don't have citizenship measures, so we can't take account of  
21 that information. Some of the data -- some of the results from  
22 those surveys will reflect noncitizens. I should just add  
23 there that one note -- one important note here is that the data  
24 from the ACS that does have a comparison between citizens and  
25 noncitizens, indicates that noncitizens are less likely to have

1 disabilities. The disability rates are higher among citizens.

2 Q. That's an interesting observation. I wouldn't have  
3 thought of that particular point.

4 A. Yeah. Noncitizens tend to be younger. And  
5 immigrants, in general, tend to be younger and be less likely  
6 to have disabilities.

7 Q. And so what are the limitations of the ACS data when  
8 you were applying it? Did you identify any limitations, I  
9 should say?

10 A. No. It's a very high quality sample. The Census  
11 Bureau is extremely good about ensuring this is a  
12 representative sample. A limitation, as I indicated, is there  
13 is no direct information on who voted and who didn't vote. But  
14 for the numbers I present, comparisons by demographics, by type  
15 of disability, and so forth. It's a very, very high quality  
16 sample. I don't -- I'm not aware of limitations.

17 Q. Okay. So the ones that you, I think, raised to a  
18 minor extent is it doesn't identify who voted. Is that  
19 correct?

20 A. Correct.

21 Q. It doesn't identify who's registered to vote. Is  
22 that right?

23 A. Correct.

24 Q. And then it doesn't distinguish between different  
25 types of institutions when an individual is living within an

1 institution?

2 A. Correct.

3 Q. Have you encountered any limitations when it comes to  
4 the current population survey?

5 A. I'm sorry, do I --

6 Q. Have you encountered specific limitations when using  
7 data from the current population survey?

8 A. No. It does not have people in group quarters. That  
9 would be the main limitation.

10 Q. And does that one identify people who voted?

11 A. Yes. The monthly survey, as I mentioned, it's done  
12 every month to generate employment statistics and they add a  
13 supplement every November of even numbered years where they ask  
14 questions about voting.

15 Q. And so then registering -- the actual act of voting  
16 is one of the questions?

17 A. The act of voting, and they ask about registration,  
18 and also how you voted. Did you vote by mail? Did you vote  
19 early or not? And just to be complete, they will also ask  
20 questions of people who did not vote or were not registered,  
21 why they were not registered or why they did not vote.

22 Q. And what's the sample size for that?

23 A. Sample size is between 80,000 and 90,000 each time  
24 they do it. The most -- most recently in 2020, it was a little  
25 over 80,000.

1 in any event.

2 A. Right, right. We certainly could in state but we  
3 were not comfortable doing any state specific estimates from  
4 that because the sample size is just too small, as you say.

5 Q. And so I'll ask the question I asked for the other  
6 ones. When you were using this report throughout -- when you  
7 were using the survey in the report, did you come across any  
8 specific limitations?

9 A. No.

10 Q. Now, when we were talking about the CPS, you had  
11 mentioned that that one asks about voting and asked about  
12 registration and asked about mail-in voting specifically.  
13 Correct?

14 A. Yes.

15 Q. Do any of the other ones get at that information?

16 A. Yes. The DBAS asks about all of those things; about  
17 voting, about registration. The SPAE is limited to registered  
18 voters, but they do ask about whether the registered voter  
19 voted or not. Otherwise, the other data sets, yeah -- right.  
20 CPS, and, DVS, and SPAE are the three with voting information.  
21 The ACS, and SIPP, and NHTS do not have voting information.

22 Q. Okay. So if we go to paragraph 31, you talk about  
23 how ACS and CPS measure disability using six questions. And I  
24 just want to clarify that I'm interpreting this correctly --  
25 that they both asked the same questions.

1 A. Yes.

2 Q. Okay. And so, four of the questions measure  
3 impairments, vision, hearing, cognitive, and mobility, and then  
4 two of the questions measure activity limitations, such as  
5 difficulty dressing, or bathing, or difficulty going outside  
6 alone. Did I read that correctly?

7 A. Yes.

8 Q. And you also had mentioned that the SIPP, or  
9 S.I.P.P., uses a more extensive set of over 100 questions to  
10 derive its disability measures?

11 A. Yes.

12 Q. And have you noticed the difference between the two  
13 in the accuracy of being able to identify the population of  
14 individuals with disabilities?

15 A. They -- by using different measures, by using more  
16 expensive measures -- I'm sorry, not more expansive -- by using  
17 a greater number of questions, the SIPP is able to identify a  
18 greater number of disabilities. The ACS and CPS, as I  
19 described, may undercount disabilities because it's just not  
20 possible, even with 100 questions, to identify all the  
21 potentially disabling conditions. There's a tremendous amount  
22 of variety in terms of disability.

23 Q. And so for these surveys, particularly ACS, CPS, and  
24 the SIPP, do individuals self-identify as having a disability?

25 A. They -- the word disability is not used in ACS and

1 CPS questions, so people are not self identifying that yes, I  
2 have a disability. A lot of research has shown there's a great  
3 stigma associated with disability and people are reluctant to  
4 identify, so the ACS and CPS do not use the word disability.  
5 So people don't self identify as having a disability; they do  
6 self identify as having a vision impairment, or hearing  
7 impairment, and so forth. But yes, all -- so all of the  
8 measures are based upon self-identification of particular  
9 impairments, or conditions, or activity limitations. But they  
10 don't -- they're not self-identifying that, yes, I have a  
11 disability.

12 Q. Okay. So, using ACS and CPS as a -- as an example,  
13 they would identify themselves as having a vision impairment,  
14 or a hearing impairment, or cognitive impairment, or mobility  
15 impairment. Is that right?

16 A. Correct.

17 Q. Okay. So we had talked before about the definition  
18 of disability and how in your report, you use the ADA  
19 definition. Correct?

20 A. Yes.

21 Q. And so I guess I'm trying to figure out how do we  
22 ascertain, or is possible to ascertain, whether the individuals  
23 when they're marking a, let's say vision impairment, are  
24 utilizing the same definition as the ADA? Or have a  
25 substantial limitation -- I'll put it that way, with the term

1 an impairment that is very mild. I mean, if they just have a  
2 little problem seeing things now and then, they are very  
3 unlikely to say, yes, I have a vision impairment. They --  
4 those who have ADA covered disabilities, vision impairments are  
5 much more likely to say yes to that kind of question.

6 Q. And so is it fair to say that these surveys give a  
7 best estimate, but there's a possibility of both an overcount  
8 and undercount?

9 A. There's a possibility of overcount and undercount. I  
10 think that the possibility of undercount is much more likely  
11 because, as I -- as I described, they don't capture some of the  
12 conditions. For example, they don't capture bipolar disorder.  
13 They don't capture conditions like diabetes, and so forth. I  
14 think the likelihood of undercount is much more likely than the  
15 likelihood of overcount, if I said that right.

16 Q. So let's look at paragraph 32.

17 A. Okay.

18 Q. We're going to be going into the second sentence.  
19 Actually, let's start with first. I think it actually goes  
20 with what you just said. "An important note is that the six  
21 questions used by the ACS and CPS are likely to capture only a  
22 portion of the full disability population (as defined by the  
23 broad ADA definition described above)." Did I read that  
24 correctly?

25 A. Yes.



1 Q. And then it goes, "One issue is that people might  
2 underreport disabling conditions, as found in research  
3 comparing subjective reports to objective reports of health  
4 conditions." Did I read that correctly?

5 A. Yes.

6 Q. And then it says, "A second important issue is that  
7 measuring disability is made difficult by the wide variation in  
8 types of disability and the severity of disabilities." Did I  
9 read that correctly?

10 A. Yes.

11 Q. And so you had talked about this a little bit before  
12 about the variation of disability, and I think you said that  
13 makes it difficult to capture. Is that right?

14 A. Difficult to capture all disabilities, yes, in any  
15 set of questions.

16 Q. And so, how varied is the definition of disability?  
17 If you can give me kind of a sense.

18 A. How varied is it?

19 Q. Well, yeah. I'm trying to get a sense of sort of  
20 like -- so it would include cognitive, it would include  
21 hearing, vision, mobility. Are there any other types of  
22 disability that you think are particularly relevant in our  
23 discussion?

24 A. The main areas that would not be captured by the --  
25 by the ACS and CPS questions, I think, some mental illnesses

1 such as bipolar disorder, as I said, conditions like cancer,  
2 and long-term health conditions like cancer are probably going  
3 to be underreported, and -- let's see. I was going to mention  
4 one other. Oh, yes. Back pain. A lot of disabilities -- this  
5 comes up a lot in work settings -- issues of work disability  
6 eligibility for disability income benefits are issues of back  
7 pain and the -- some other research that's been done suggests  
8 that there's a lot of people out there with back pain, and that  
9 may not be fully captured here. The mobility question, do you  
10 have difficulty going, you know, walking or climbing stairs,  
11 that will capture some people with back pain but not a lot. So  
12 pain is more generally, I think, is something that's not  
13 captured that may -- that is undercounted by these questions.

14 Q. And we can discuss a little bit more later when we  
15 get to the substance of the report but it sounds like there's a  
16 decent amount of disabilities that are invisible to an  
17 individual who is -- if you're talking to somebody with a  
18 disability, you may not be able to tell by first appearance.  
19 Is that right?

20 A. Absolutely. Yes. Yes, there are many invisible  
21 disabilities.

22 Q. So we're going to go to paragraph 33, particularly,  
23 the sentence you see I highlighted.

24 A. Okay.

25 Q. "Due to the smaller samples in SIPP and CPS, in

1 several breakdowns I complement the Texas numbers from those  
2 surveys with numbers for the overall U.S., plus estimates of  
3 the significance of any differences between the U.S. and Texas  
4 samples." Did I read that correctly?

5 A. Yes.

6 Q. And so how did you complement the Texas numbers?

7 A. I simply provided the Texas numbers in one column and  
8 the US numbers in another column, so one can compare the -- so  
9 one can compare the patterns to see if Texas looks very  
10 different from the overall U.S.

11 Q. And so when you say complement, you're using a  
12 comparison between the two?

13 A. Yes, yes.

14 Q. And so you didn't incorporate the Texas numbers with  
15 the US numbers, you instead use it as a comparison?

16 A. Right, right.

17 Q. I was trying to figure out if you supplemented the  
18 numbers with the US numbers or if it was some other --

19 A. No. Yeah, right. I'm not using complement in the --  
20 in that sense. I'm using complement in the sense of extra  
21 information that helps shed light on the -- on the plausibility  
22 of the Texas patterns. If we saw a very different pattern in  
23 Texas than the overall US, it might be due to some -- might be  
24 due to a small sample in Texas creating some skewed results.  
25 But we see, in general, the same patterns between Texas and the

1 overall US giving us some reassurance that the patterns we see  
2 in Texas are true when you compare people with and without  
3 disabilities.

4 Q. So, if we go to paragraph 34 -- I'll read the  
5 sentence above but the one I'm going to be talking about is  
6 this particular one. "In a number of places, I compare results  
7 between people with and without disabilities showing that  
8 people with disabilities face economic and social disparities  
9 and higher rates of voting difficulties that are linked to  
10 lower voter participation." Did I read that sentence  
11 correctly?

12 A. Yes.

13 Q. And then it continues, "These disparities are  
14 maintained when holding constant the effects of demographic  
15 characteristics." Did I read that sentence correctly?

16 A. Yes.

17 Q. And then you continue, "The effects of disability may  
18 be even greater than indicated by the simple difference between  
19 people with and without disabilities, because voters without  
20 disabilities may face many other non-disability-related  
21 difficulties, such as language barriers." Did I read that  
22 correctly?

23 A. Yes.

24 Q. When you are -- in your report, you are only offering  
25 your observations with respect to disparities on voters with

1 roughly speaking, you know, 1/3 of that -- 1.5% would be in  
2 correctional facilities. They are included in the ACS numbers  
3 I present, even though they were not eligible to vote,  
4 obviously.

5 Q. Okay. So they were individuals who are in  
6 correctional facilities who are not registered to vote would  
7 have been incorporated within the ACS data. Is that right?

8 A. Yes.

9 Q. Okay. And then nothing was done in order to weight  
10 or account for that addition. Is that right?

11 A. No, there's no simple way to do that without --  
12 without further data.

13 Q. Okay. So you were unable to weight or account for it  
14 within this report. Is that right?

15 A. That's right. I'll just add, though, that I -- I can  
16 do the comparisons with or without comparing those in  
17 institutions, and just exclude that entire group. And the  
18 basic patterns we find on employment, poverty, and so forth,  
19 very much hold. The institutional group does not affect those  
20 overall patterns very much. It's a very small group,  
21 obviously.

22 Q. So to the extent those affect patterns, it would  
23 affect in the voting context, not in the general  
24 characteristics such as maneuverability, poverty, job access,  
25 things of that nature. Is that right?

1           A.     Right. But even in the voting context, I think it  
2     would be a pretty small effect. The -- it would be -- it is  
3     better to include the people who are in nursing homes --  
4     nursing homes and mental hospitals. I think that provides a  
5     more accurate portrayal, even if it does include some people in  
6     correctional facilities.

7           Q.     So let's go into the overview. If you see it, it's  
8     on page 10.

9           A.     Okay.

10          Q.     Do you see the section where it says, "OVERVIEW:  
11     PREVALENCE AND GENERAL CHARACTERISTICS OF PEOPLE WITH  
12     DISABILITIES AND IMPLICATIONS FOR VOTING ACCESS"?

13          A.     Yes.

14          Q.     All right. Your first sentence in the summary reads,  
15     "In order to fully understand the extensive barriers people  
16     with disabilities face in accessing their fundamental right to  
17     vote, it is critical to provide an overview of the general  
18     barriers people with disabilities face in their daily lives and  
19     how each of these factors can impact access to voting." Did I  
20     read that correctly?

21          A.     Yes.

22          Q.     And so then, we look at the next subsection down, it  
23     says, "Overall Prevalence and Types of Disabilities." Do you  
24     see that?

25          A.     Yes.

1 Q. Okay. And so this is the initial analysis that you  
2 described in the previous paragraph. Is that right?

3 A. Right.

4 Q. And so if we look into paragraph 38, it reads as --  
5 and I'm looking at the second -- sorry, third sentence, "Based  
6 on the 2020 ACS 6-questionnaire measure, Table 1 shows that  
7 15.6% of voting-eligible people in Texas have disabilities,  
8 representing 3 million people." Did I read that correctly?

9 A. Yes.

10 Q. And so this is using ACS data and specifically the  
11 data that was broken down for Texas specifically. Correct?

12 A. Yes.

13 Q. And you might know this more than me. The ACS  
14 questionnaire for 2020, is there any deviations that can be  
15 expected from the 2020 study that may not be prevalent in other  
16 studies because of the Covid-19 pandemic?

17 A. The Census Bureau paid a lot of attention to this  
18 issue. In fact, they had two months, March and April, when  
19 they suspended data collection -- the household survey data  
20 collection due to the pandemic. They ended up creating, as I  
21 say, they paid a lot of attention to this, they created weights  
22 based -- taking account of that issue, trying to account as  
23 best they could for the problems caused by the pandemic.

24 Because of the possibility of the pandemic affecting  
25 the numbers, I also examined these numbers over the year before

1 in 2019. And the numbers are very, very close when you look at  
2 the different disparities: the demographics, the differences in  
3 age, and in race, and that type of thing. Differences in the  
4 prevalence of different types of disability are very, very  
5 similar between 2019 and 2020. So the pandemic did not seem to  
6 impair the estimates -- the data collection and the estimates  
7 generated by the Census Bureau for 2020.

8 Q. So to the extent the pandemic affected the initial  
9 data, ACS, or I should say Census Bureau, weighted it  
10 accordingly, and then you also looked at the data individually  
11 itself. Is that right?

12 A. Right. Yeah, they provided weights, as they do every  
13 year, to make sure that the estimates fully reflect the --  
14 fully reflect the -- or are fully representative of the  
15 population; and then I use those weights in generating my  
16 estimates.

17 Q. So then, if we go to the next sentence, it says,  
18 "Based on the SIPP survey's more extensive set of disability  
19 questions, 30.5% of voting-age people in Texas have  
20 disabilities representing 5.6 million people when applied to  
21 the 2020 population numbers." Did I read that correctly?

22 A. Yes.

23 Q. So I recognize that the ACS looks at voting eligible,  
24 whereas the SIPP is looking at voting age population. But is  
25 there another reason that would account for the difference



1 between 5.6% versus 30.5%?

2 A. Quite simply that the more extensive question -- set  
3 of questions, over 100 questions used by SIPP they do measure,  
4 they ask specific questions about epilepsy, about Asperger's,  
5 about diabetes. They ask a variety of questions. The more  
6 questions you ask, the more likely you are to have someone say  
7 yes to one of the questions; so they identify a wider range of  
8 disabilities.

9 Q. And I think you had mentioned earlier that -- or it  
10 might have been elsewhere in your report that certain types of  
11 disabilities have certain -- different impacts on voter -- on  
12 people's ability to vote. Is that correct?

13 A. That's true. We do see that -- that people with  
14 hearing impairments tend to be similar in voting to the hearing  
15 population, whereas people who have cognitive impairments and  
16 difficulty going outside alone are most likely -- or are the  
17 least likely to vote.

18 Q. Okay. So is it fair to say then a person's  
19 disability is incredibly fact specific?

20 A. Yes.

21 Q. And would it be fair to say that it's very unique to  
22 that person's disability?

23 A. It's fair to say that it's unique to each person, but  
24 there are commonalities. Hearing people -- you know, people  
25 with hearing impairments, people with visual impairments, share

1 a lot of the same conditions and issues. People in  
2 wheelchairs, obviously, share a lot of the same issues. So  
3 it's not perfectly unique. Yes, it's unique. Every person's  
4 body is unique, but there are commonalities.

5 Q. Is it fair to say then that the barriers an  
6 individual with a disability would face is fact specific in  
7 their everyday life?

8 A. Yes. Again, there are commonalities. People in  
9 wheelchairs, for example, have a very difficult time with  
10 steps. They can't go up steps. So there's -- so there's a lot  
11 of commonality that -- in the kinds of barriers that people  
12 face. And that's the nature of a lot of rehabilitation efforts  
13 is to try to take lessons learned from other people who have  
14 faced particular barriers and apply them to people in similar  
15 situations.

16 Q. So to kind of synthesize the two points then, would  
17 it be fair to say that the barriers an individual with  
18 disability faces is fact specific, but there are certain  
19 commonalities that might be shared in somebody similarly  
20 situated?

21 A. Yes, I think that's fair.

22 Q. And would it also be fair to say then, that the  
23 barriers to voting somebody might face, that person with a  
24 disability, is fact specific albeit there are certain  
25 commonalities that the individual might share for others who

1 are similarly situated?

2 A. Yes, I think that's fair.

3 Q. And so, you had mentioned with the SIPP that it had a  
4 wider range of disabilities. Correct?

5 A. Yes.

6 Q. So a lot of these disabilities, though, that are  
7 picked up by the survey, would not pose a barrier to somebody  
8 with doing each everyday activity. Is that right?

9 A. Right. To doing each of the activities, right.

10 Q. And so not every person with a disability, or not  
11 every type of disability picked up by the SIPP, would pose a  
12 barrier for somebody being able to register to vote?

13 A. That's true. Yes.

14 Q. And is it also true then, that by picking up a wider  
15 range of disabilities, not every disability would pose a  
16 barrier to somebody being able to vote?

17 A. Right. That's true. Both of the more restricted set  
18 of six questions, and of the more expansive set of questions,  
19 that they will pick up people who may not face barriers in  
20 voting. And, of course, we find that in the -- in the EAC  
21 survey -- the EAC sponsored survey we did that people with  
22 disabilities are less likely to vote but among those who do  
23 vote, there are plenty of people who are able to vote without  
24 problem. The rate of difficulty is higher among people with  
25 disabilities, but a majority of people with disabilities who

1 vote are able to do so without any reported difficulties.

2 Q. So I think you said, "A majority of people who have  
3 disabilities who vote are able to do so without difficulties."  
4 Is that correct?

5 A. Right. We found that among those who vote in the  
6 polling place in 2020, 18% said that they reported some type of  
7 difficulty in doing so; meaning that 82% said they did not have  
8 difficulty in voting in a polling place.

9 Q. And I think you had mentioned that there was a  
10 decline from a couple of years ago. Is that right?

11 A. Yeah. That was very heartening progress that in  
12 2012, it was -- the rate was 30%, and in 2020 it had gone down  
13 to 18%, which is -- and that was a statistically significant  
14 decline. It was both statistically significant and  
15 substantially significant -- a 12-point drop.

16 Q. You wouldn't have happened to have done any  
17 assessment on why there was a decline, would you?

18 A. Yes, we did some assessment of that. We looked at,  
19 and I think I mentioned briefly earlier, we looked at the  
20 extent to which that might be accounted for by the pandemic.  
21 There is -- of course a number of states made it easier to  
22 access mail ballots, and mailed -- in some states, mail-in  
23 ballots to everyone, for example, my own state of New Jersey.  
24 I received a -- I automatically received a mail ballot. So  
25 there was a great increase in voting by mail in 2020.

1 We did some analysis for the EAC report finding that  
2 pretty close to half of that decline -- that decline from 30 to  
3 18 -- of that 12-point decline, about half of that, the six  
4 points of the decline, was due to the shift to voting by mail  
5 where people reported fewer problems. The other six points  
6 appear to be due to increased -- increased accessibility of  
7 polling places; that election officials had done a good job in  
8 helping make polling places more accessible.

9 Q. And so to go back to our earlier point, for each of  
10 these surveys -- the six surveys that you utilized in the  
11 report -- they would capture a wider range of disabilities  
12 where people with disabilities whose disability would not pose  
13 a barrier to voting. Is that correct?

14 A. Yes. They'll certainly capture people whose  
15 disability does not --

16 Q. And so the 3 million Texans with disabilities  
17 identified by the ACS, that's 3 million people who have  
18 disabilities; it's not 3 million people who would have  
19 barriers --

20 A. No, that's true.

21 Q. And the same with the 5.6 million people identified  
22 by the SIPP. That's 5.6 million people with identified  
23 disabilities, not 5.6 million people who would have barriers to  
24 voting because their disability?

25 A. Right. These are groups that have a higher

1 used?

2 A. I don't remember the full -- the full verbiage but  
3 it's, "Do you have difficulty remembering, concentrating, or  
4 making decisions?"

5 Q. Thank you. If it makes you feel any better, the more  
6 I'm quiet, the more I'm skipping questions.

7 A. That's fine. No rush.

8 Q. Okay. So, looking at paragraph 44 --

9 A. Okay.

10 Q. -- this is where you break down disabilities with  
11 other demographic characteristics. Correct?

12 A. Yes.

13 Q. Or I should say tie them together.

14 A. Yes.

15 Q. And then you say, "The prevalence of disability in  
16 Texas is markedly higher among Native Americans, Black people,  
17 older people, and those with lower levels of education." Is  
18 that correct?

19 A. Yes.

20 Q. And so, is this the only area where you are offering  
21 an assessment of other demographic characteristics with respect  
22 to disabilities?

23 A. Yes. As noted earlier, I -- the disability  
24 disparities I've identified also hold when controlling for  
25 these things in regressions, and I'd be glad to talk about the

1 nature of the regressions. But when you hold constant these  
2 other factors -- we still see those disability disparities.

3 But I don't present those regressions in this paper, obviously.  
4 But here is the only place that I explicitly break down the  
5 numbers by race, gender, age, etc.

6 Q. And so, when we get later into the report, and we're  
7 talking about the barriers to voting, you do not break down the  
8 data based on demographic characteristics such as race, gender,  
9 or age. Is that correct?

10 A. That's correct. We've -- we've done that in the fact  
11 sheets we present after we develop after each election, but I  
12 do not do those -- do those breakdowns of voting by demographic  
13 characteristics in this report.

14 Q. You don't do it in this report. Correct?

15 A. Correct.

16 Q. So in 45, you say, "The relationship between  
17 education and disability reflects causality in both directions.  
18 Disability can limit education due to barriers that people with  
19 disabilities often encounter in furthering their education,  
20 such as lack of a correct diagnosis or appropriate  
21 accommodations especially for poorer children. Education also  
22 has an impact on disability: it can open up jobs with safer  
23 working conditions that are less likely to lead to disability,  
24 and provide higher incomes that increase access to health  
25 services and assistive technology that help people cope with

1 resources for voting". Did I read that correctly?

2 A. Yes.

3 Q. And then it continues, "Not having internet access  
4 can make it more difficult to: a) register to vote; b) find out  
5 how and where to vote, particularly if polling places have been  
6 changed; c) gather information on candidates and issues in  
7 order to make informed decisions in voting; and d) cure issues  
8 with mail-in ballot applications." Did I read that correctly?

9 A. Yes.

10 Q. Okay. And then it continues, "These difficulties  
11 create special problems when voting information is only  
12 provided in an online format." Did I read that correctly?

13 A. Yes.

14 Q. So looking at these four categories: Registered to  
15 vote, find out how and where to vote, gather information on  
16 candidates and issues, and then, D, cure issues with mail-in  
17 ballot applications, which of these four do you think is  
18 affected by SB 1?

19 A. Certainly, the fourth one is affected by SB 1.

20 Q. Okay. So your representation is that of the four  
21 challenges presented by having no internet access, the fourth,  
22 cure issues with mail-in ballot applications, is the one  
23 particular of SB 1 that would be affected by it. Is that  
24 correct?

25 A. That's correct. I'm not aware of SB 1 affecting the



1 Q. And would you agree with me that some individuals may  
2 find it difficult to use public transportation but find it  
3 easier to use a modified minivan that allows for handicap  
4 accessibility?

5 A. It's certainly true that the ability to use different  
6 modes can convey one, and obviously people will take the mode  
7 that's most convenient and makes sense for them.

8 Q. Okay. Let's move on to the next section, which is  
9 "Social Isolation, Stigma and Bias." Specifically, I want to  
10 look at paragraph 61. Do you have it in front of you?

11 A. I do.

12 Q. So the beginning of the paragraph reads, "The social  
13 isolation is reflected in, and reinforced by, the  
14 well-documented stigma attached to disability that continues to  
15 be manifested in attitudinal studies of the general  
16 population." Did I read that correctly?

17 A. Yes.

18 Q. "These attitudes toward people with disabilities  
19 impact all areas of an individual's life. The stigma attached  
20 to disability may impact the perception of a person's abilities  
21 that do not align with reality." Did I read that correctly?

22 A. Yes.

23 Q. It continues, "This can impact the ability of people  
24 with disabilities to vote by, for example, making people  
25 (particularly those outside of their families) less willing to

1 assist them with voting, and can also result in people with  
2 disabilities themselves being less willing to ask for  
3 assistance when needed." Did I read that correctly?

4 A. Yes.

5 Q. And so, a couple of questions based on this  
6 paragraph. The first one is what report is this factual  
7 assertion based because I don't see a particular citation here?

8 A. It's based on citations there in note 12.

9 Q. Thank you. So the footnote extends to the rest of  
10 the paragraph. Is that right?

11 A. Yes, it does. And I should note that the citation  
12 that is in note 12, I relied on not just on single studies. I  
13 relied on literature reviews and meta analyses that combine the  
14 results of many studies. So these are broad overviews, not  
15 just -- not just single studies.

16 Q. Thank you for the clarification. So this last  
17 sentence where it says, "This can impact the ability of people  
18 with disabilities to vote." You give an example, but can you  
19 kind of explain how does it make people less willing to assist  
20 them with voting?

21 A. One of the common ways of measuring stigma is through  
22 what's known as a social distance scale. That is how  
23 comfortable people are being around someone.

24 And this dates back to a lot of research that was  
25 done on race, how comfortable whites are, for example, being

1 close to blacks. Would you want one sitting next to you?  
2 Would you want one as a coworker? Would you want one to marry  
3 your sister? And so forth.

4 So this is measured by -- social distance is often  
5 used if -- and people tend to feel uncomfortable. They want  
6 more social distance from people with disabilities.

7 Particularly, the greatest stigma is with people with cognitive  
8 disabilities. Given there's that social distance, and people  
9 don't want to be near people with disabilities, I think  
10 that's -- will clearly lead to making it more difficult to find  
11 people willing to assist you with voting if you have people who  
12 feel uncomfortable around you.

13 Q. And does any difficulty stem from some of the  
14 disabilities being less visible than others, and some  
15 individuals not knowing whether to offer assistance?

16 A. That's an interesting question. The visibility of a  
17 disability is obviously important. If someone's not aware that  
18 someone has a disability, they may be more willing to help them  
19 out; however, many of the invisible disabilities, or mental, or  
20 cognitive ones, which tend to attach the -- tend to attract the  
21 greatest stigma. So if people know that someone has a mental  
22 or cognitive disability, they're -- they're -- they feel  
23 uncomfortable around them. They are more likely to feel  
24 uncomfortable around them, and less willing to -- many people  
25 will be less willing to help them out; not everyone, but many

1 people will.

2 Q. All right. Let's jump to the next large section,  
3 which is, "Voting Barriers Facing People with Disabilities."  
4 This starts on paragraph 62. Do you see it right below?

5 A. Yes.

6 Q. And so if you go into the middle of the paragraph, it  
7 says, "Data from the Current Population Survey Voting and  
8 Registration Supplement show that 71.9% of eligible citizens  
9 with disabilities in Texas were registered to vote in 2020, and  
10 59.4% voted, compared to 71.2% and 64.5% of citizens without  
11 disabilities respectively." Did I read that correctly?

12 A. Yes.

13 Q. And so I noticed that the voter registration rate is  
14 very comparable between individuals with disabilities and  
15 without disabilities in Texas. Is that correct?

16 A. Yes.

17 Q. Is that something you see in other states, or is that  
18 something specific to Texas?

19 A. In general, nationally, the registration rate is  
20 lower among people with disabilities. It's not -- it's about  
21 half the size of the overall voting gap. So yes, Texas is  
22 slightly different than the pattern in the overall United  
23 States and in the United States as a whole, the voting  
24 registration -- voter registration rate is lower among people  
25 with disabilities and people without disabilities by about

1 three percentage points.

2 Q. And so that's a measurement that Texas does better  
3 than the national average. Is that correct?

4 A. Yes. And I'm not sure if it's a statistically  
5 significant difference. I'd have to do that test. I haven't  
6 done that specific test but at least according to this  
7 estimate, our best guess is that Texas is doing better than the  
8 rest of the country.

9 Q. And have you analyzed why Texas is doing better than  
10 the rest of the country with respect to the voter registration  
11 rate?

12 A. No, I haven't analyzed that. As I say, it could be  
13 a -- it could be within the margin of error, and I suspect  
14 there's a good chance it is.

15 Q. And so you see a sizable gap between the eligible  
16 citizens who are registered to vote versus the number who  
17 actually voted. Is that correct?

18 A. Yes.

19 Q. In Texas?

20 A. Yes, yes.

21 Q. And so, what factors lead to the disparity between  
22 people being able to register to vote with disabilities but  
23 people not being able to vote itself?

24 A. I think a big factor is that you may register only --  
25 it's possible you may register only once in your life. You

1 could have registered decades ago, like when you first became  
2 eligible to vote at age 18. And if you have done that once,  
3 you may not have had a disability at that point. Decades  
4 later, you have a disability and you're still registered, but  
5 you may encounter a lot of barriers associated with voting as a  
6 person with a disability at that point.

7 So I think age really plays into this. The  
8 registration you do only once or every time you move, which is  
9 pretty infrequent for most people; whereas voting is something  
10 you do, ideally, every election. There's a lot more -- a lot  
11 more effort and potential barriers encountered in voting every  
12 election than there is with that one time of registering.

13 Q. And so this number count, these numbers come before  
14 the adoption of SB 1. Correct?

15 A. Correct.

16 Q. And have you assessed what provisions of Texas law  
17 before SB 1, impose obstacles to voting that were that would  
18 account for the difference?

19 A. I am sorry. Say that again? What provisions?

20 Q. What provisions of Texas law before SB 1 would impose  
21 obstacles to voting that would account for the difference? I  
22 was wondering if you had assessed that at all.

23 A. I have not done specific analysis of Texas. We have  
24 looked at state policies in general. Particularly in our  
25 measure of American elections study, we looked at the -- how

1 state policies on the excuse being required for an absentee  
2 ballot affects a turnout relative to states where no excuse is  
3 required, or everyone votes by mail. And we found that there  
4 was a -- there was an effect to the no excuse in the old vote  
5 by mail systems, that disability turnout was relatively higher  
6 in those states than in states like Texas where an excuse was  
7 required.

8 Our interpretation of that is when an excuse is  
9 required, people with disabilities have to mark on an official  
10 form that they have a disability. As we just discussed,  
11 there's a stigma to saying you have a disability, and putting  
12 you have a disability on official government form is something  
13 that a lot of people don't want to do. It appears to dissuade  
14 people with disabilities from applying if they are forced to  
15 say that they have a disability in applying for an absentee  
16 ballot. So that's what -- when we looked at the effects of  
17 these policies overall in the -- in the country -- but the  
18 specific answer your question, though, is no, we haven't  
19 specifically analyzed Texas.

20 Q. And so, you haven't analyzed Texas and the one  
21 practice that you've identified, specifically, nationwide had  
22 to do with excused versus non-excused mail-in voting. Is that  
23 right?

24 A. Yes. We actually also in that study looked at the  
25 availability of assistive technology -- assistive accessible

1 in 2020 was lowest among people with difficulty dressing or  
2 bathing, cognitive impairments, and difficulty going outside  
3 alone, but participation was also low among those with visual  
4 impairments or difficulty walking or climbing stairs." Did I  
5 read that correctly?

6 A. Yes.

7 Q. And this goes back, I think, to what we were saying  
8 before about the varied nature of disabilities. Is that right?

9 A. Right.

10 Q. And so, have you -- in terms of accommodating these  
11 different types of disabilities, would that be a fact specific  
12 analysis?

13 A. As we discussed, each person may be unique in the  
14 particular configuration. They have abilities and  
15 circumstances, so that would make it fact specific. But there  
16 are a lot of commonalities. We know, for example, that people  
17 with visual impairments benefited greatly from -- well, first  
18 of all, from large ballots -- having large, easy to read  
19 ballots, or having magnifying glasses -- just a simple measure,  
20 magnifying glasses, and from having accessible voting machines.  
21 If they're totally blind, they need an accessible voting  
22 machine with headphones and so forth, so they can -- they can  
23 operate, so they can vote independently and confidentially. So  
24 my point is, that there are these commonalities that we know  
25 there are certain practices that are relevant to people with a



1 particular type of disability.

2 Q. So is it fair to say then there are certain  
3 commonalities, but to make the final determination of how to  
4 provide a reasonable accommodation require fact specific  
5 analysis?

6 A. For a particular individual, a particular reasonable  
7 accommodation, yes. It has to be tailored to the person.

8 Q. And let's look at paragraph number five. You see --

9 A. I'm sorry. You mean 65?

10 Q. Yeah, 65.

11 A. 65. Okay.

12 Q. You say, "Research indicates that several factors  
13 contribute to the disability participation gap including lower  
14 levels of education and income, lower feelings of political  
15 efficacy among people with disabilities, and greater social  
16 isolation that reduces the likelihood of being recruited to  
17 vote by friends, neighbors, or colleagues." Did I read that  
18 correctly?

19 A. Yes.

20 Q. Then you continue, "These factors do not, however,  
21 fully explain the disability gap in participation." Did I read  
22 that correctly?

23 A. Yes.

24 Q. Then it finally continues, "Part of the remaining gap  
25 and participation can be traced to lower turnout due to prior

1 difficulties voting." Did I read that correctly?

2 A. Yes.

3 Q. Now, when you use this phrase at the end, "part of  
4 the remaining gap in participation can be traced to lower  
5 turnout due to prior difficulties in voting", so in this case,  
6 you're talking about an individual who had tried to vote but  
7 was unable?

8 A. I need to be clear on this. We have not been able to  
9 track individuals from election to election. We hope to be  
10 doing that with the next election with our most recent EAC  
11 survey. However, we do find that people who have difficulties  
12 in voting, that's a strong predictor of negative feelings of  
13 external efficacy -- lower feelings of external efficacy and  
14 external efficacy. Local efficacy is the belief that the  
15 system is responsive. So people who face difficulties are less  
16 likely to feel that the system is responsive to people like  
17 them.

18 In turn, that feeling, that negative efficacy, is  
19 related to lower turnout. So just to be clear, we're not  
20 tracking specific people here but we are tracking the  
21 attitudes and how those are related to -- how the difficulty in  
22 turnout predicts lower feelings of efficacy and lower feelings  
23 of efficacy -- I'm sorry -- difficulties in voting predict  
24 lower turnout -- difficulties in voting predict lower feelings  
25 of efficacy, and lower feelings of efficacy predict lower

1 turnout; if I said that correctly. I hope I did.

2 Q. I think you did. I hope.

3 A. Okay.

4 Q. And so just to clarify, you gave a pretty long and  
5 factual answer, that you do not trace voters from election to  
6 election, but you hope to do so in the future. Is that  
7 correct?

8 A. Yes. We are greatly looking forward to doing that.  
9 That will be a -- that will be a wonderful methodological  
10 advance.

11 Q. And so your opinions and observations that articulate  
12 in report are not based on any study that tracked voters from  
13 election to election. Is that correct?

14 A. That is correct.

15 Q. Now, you often hear the phrase enthusiasm gap when it  
16 comes to voting, and is this sort of what you're getting at in  
17 this paragraph, that there's an enthusiasm gap for a variety of  
18 different reasons among individuals with disabilities versus  
19 those without?

20 A. There have been several surveys looking at the  
21 interest of people with disabilities in elections, and  
22 interestingly, people with disabilities tend to express -- tend  
23 to say they follow election news just as much as people without  
24 disabilities and they would like to vote just as much as people  
25 without disabilities; however, they end up not voting as much

1 as people without disabilities. And I think that's fairly --  
2 that certainly supports the idea that they face barriers in  
3 voting.

4 Q. So in paragraph 66, you have your opening line: "An  
5 important note is that voter participation can vary  
6 substantially across elections for citizens both with and  
7 without disabilities." Did I read that correctly?

8 A. Yes.

9 Q. And so, does this mean that you can't get -- you have  
10 to look at multiple elections in order to determine trends for  
11 voters with disabilities as opposed to looking at one specific  
12 election?

13 A. You certainly have to look at multiple elections to  
14 look at trends. The point that I'm trying to make here is that  
15 as we found in our factsheet on voter turnout in 2020, we found  
16 that turnout increased substantially among people with  
17 disabilities from 2016 to 2020. The point of this paragraph 66  
18 is to caution that that doesn't mean there are no barriers.  
19 The fact that the turnout went up among people with  
20 disabilities, the turnout can still go up even as they continue  
21 to face barriers. So that was the point of that -- that  
22 paragraph.

23 Q. Okay. So if turnout can go up, and that's not  
24 necessarily an indication that barriers have declined, how  
25 would we identify when barriers have declined or no longer

1 transportation problems, or other issues that make it hard to  
2 leave one's home. This is particularly relevant to the 10.0%  
3 of Texans who report travel-limiting disabilities as shown in  
4 Table 7, and the 8.3% of Texans who have difficulty walking or  
5 climbing stairs and 5.8% of Texans who have difficulty going  
6 outside alone, as shown in Table 1." Did I read that  
7 correctly?

8 A. Yes.

9 Q. And then it goes on, "The 3.3% of voting-eligible  
10 Texans with vision impairments, however, may not be able to  
11 vote independently with a mail ballot, and may need polling  
12 places where they can vote independently with an accessible  
13 machine required by the 2002 Help America Vote Act." Did I  
14 read that correctly?

15 A. Yes.

16 Q. And so when you're talking about how certain methods  
17 can be more attractive to one group with disabilities as  
18 opposed to another, are you looking at specific studies that  
19 show that, or were you just relying on your [unintelligible]?

20 A. We find, for example, in our EAC surveys that  
21 supporting this point here that people with vision impairments,  
22 who vote by mail report that 22% of them reported difficulty in  
23 voting by mail. We see that problem and we also see that  
24 people with mobility impairments are more likely to report  
25 difficulties in going to vote at a polling place. So we do see

1 that variation in difficulty by type of disability.

2 Q. And when you were talking about individuals with  
3 visual impairments reporting difficulty voting by mail, did  
4 they also voice any other concerns that you had read, such as a  
5 fear of lack of privacy, for example?

6 A. No.

7 Q. Is that because the report did not capture that  
8 information, or was that just not found in the results?

9 A. In the survey, we asked people about specific  
10 difficulties that they may have had in voting, whether by mail  
11 or in a polling place. And at the end, we asked, "Did you face  
12 any other type of difficulty in voting?" And they are -- and  
13 so, then we asked for verbatim reports of what that difficulty  
14 was. To be honest, there may have been a few, I don't  
15 recollect right now, there may have been a few who cited  
16 privacy issues as part of that catch-all question at the end,  
17 but I don't remember specifically.

18 Q. Okay. So to the extent that that information be  
19 captured by the catch-all question, you don't recall if  
20 individuals with visual impairments expressed additional  
21 concerns besides the difficulties, such as lack of privacy?

22 A. Right. If I could just make a general point here  
23 that this point we're talking about, the different methods that  
24 are appropriate for different types of disabilities, that's a  
25 point that my colleague, Lisa Schur, and I often make in our

1 talks and in our work on disability and voting.

2 Given the great variation in types of disabilities  
3 and severity of disability, that one size doesn't fit all.  
4 There's no one size fits all solution. The more options, the  
5 better. The more options there are for voting, the greater is  
6 the likelihood that a particular person with a particular  
7 disability will find one method that works for them. That's a  
8 general point we'd like to make in our talks. The more  
9 options, the better, for people with disabilities.

10 Q. So, let's look at paragraph 68. You say, "Overall,  
11 people with disabilities are much more likely to vote by mail.  
12 Among Texas voters in 2020, 30.2% of people with disabilities  
13 and 8.2% of people without disabilities voted using a mail  
14 ballot, producing a gap of 22.0%, as shown in Table 8." Did I  
15 read that correctly?

16 A. Yes.

17 Q. Now, 2020 was the high watermark with respect to  
18 mail-in voting. Was it not?

19 A. Yes.

20 Q. And individuals with disabilities often had  
21 preconditions that left them at higher exposure for Covid-19.  
22 Is that accurate?

23 A. I think it's -- excuse me -- I think that's fair to  
24 say. I don't know the numbers on that or studies on that, but  
25 I think that's fair to say.

1 Q. Is it logical to conclude that individual  
2 disabilities would have been even more likely in 2020 to vote  
3 by mail than they would have in previous election cycles?

4 A. Well, in fact, I have exact data on that. In  
5 paragraph 69, I did a comparison to 2016. And in 2016, instead  
6 of 30% of people with disabilities voting by mail, 19.8% or  
7 20%; so a 10-point gap compared to 6% among people without  
8 disabilities relative to -- I think it was 8%. So the pandemic  
9 clearly increased the voting by mail among people with  
10 disabilities to a greater extent than it did among people  
11 without disabilities.

12 Q. Okay. So 22%, which you said is the gap in 2020,  
13 that was, again, like a high watermark -- the extreme of what  
14 the gap would be?

15 A. Yeah. You say the extreme of what the gap would be.  
16 Who knows what may happen in the future? There may be  
17 conditions that make it even more difficult to vote in person,  
18 but I hope -- well, hopefully not.

19 Q. Fingers crossed. Maybe the best way then of putting  
20 it would be looking back where it's as opposed to forward.

21 A. Looking backwards, that is the high watermark -- yes.

22 Q. All right. Let's jump into "Barriers to In-Person  
23 Voting". So you list a variety of factors that could prove a  
24 barrier to individuals with disabilities with respect to  
25 in-person voting, finding or getting to the polling place,



1 getting inside the polling place, standing in line, being  
2 prevented from voting by poll workers, reading or seeing the  
3 ballot, understanding how to vote or use the equipment,  
4 communicating with poll workers, writing on the ballot, and  
5 physically operating the voting machine. Did I read that  
6 correctly?

7 A. Yeah, you read the first clause of each of those  
8 correctly. That's fine.

9 Q. Yeah. Sorry. I'm --

10 A. That's fine. Yeah.

11 Q. And so I guess one of the first questions I have for  
12 you is, which of these do you think is exacerbated by SB 1?

13 A. I think several of them can be exacerbated by SB 1.  
14 As I read it, SB 1 says that people who assist can only assist  
15 in -- what was it -- reading the ballot or marking the ballot.  
16 There are other types of assistance that are needed; finding  
17 are getting into the polling place, getting inside the polling  
18 place, the going over steps clearing out -- there are media  
19 reports of people who tried to vote and find that the  
20 accessible entrance is blocked by a trash can, or something  
21 like that. Well, moving that trash can is assisting a person  
22 with a disability, and that would appear from my reading from  
23 the plain language of SB 1 to not be permitted. Assistance  
24 with helping people stand in line, bring a chair for someone  
25 who's standing in line. There's several types of assistance

1 here that I think aren't -- that fall outside the very narrow  
2 set of activities that someone is allowed to assist with,  
3 according to the language of SB 1.

4 Q. So you interpret SB 1 as not allowing an individual  
5 to help someone with disabilities find or get into a polling  
6 place. Is that a fair assessment?

7 A. It probably -- it allows people to help someone find  
8 a polling place but getting into the polling place, actually  
9 when you're at the polling place, and navigating inside of the  
10 polling place. My reading of SB 1 is that that would not be  
11 allowed by the plain language.

12 Q. Okay. So it sounds like you interpret voting  
13 assistance as anything within the polling place. Is that a  
14 fair assessment? You made a distinction between finding the  
15 polling place as opposed to getting into the polling place.

16 A. Yeah. Certainly -- okay, no, I'm going to -- I'm  
17 going to backtrack here and say, I think helping someone find  
18 the polling place, get to the polling place, that qualifies as  
19 assistance as well. Sure. Yeah.

20 Q. Okay. So it seems that you're interpreting the  
21 provisions of SB 1, and tell me if I'm wrong, as incorporating  
22 any type or as applied to any type of assistance that could be  
23 related to voting?

24 A. Yes, I think so.

25 Q. Okay. And I was going to ask these a little bit

1 the ballot (3.8% ), and getting inside the polling place  
2 (3.2%). These problems were especially likely among those with  
3 vision and mobility impairments, and those needing help in  
4 daily activities." Did I read that correctly?

5 A. Yes.

6 Q. And then if you look at the end of paragraph 72, it  
7 says, "Taken together, these results indicate that a  
8 substantial portion of the 5.7 point national disability gap in  
9 voter participation can be accounted for by a greater  
10 likelihood that registered voters with disabilities said they  
11 were not allowed to vote or were dissuaded by the long lines."  
12 Did I read that correctly?

13 A. Yes.

14 Q. And you're not -- you don't in your report state that  
15 SB 1 increases lines of polling places. Is that correct?

16 A. I think there's a very good likelihood that by making  
17 it more difficult to vote by mail, that that will drive some  
18 people with disabilities to the polls, which would increase the  
19 likelihood of long lines at the polls. I can't put a number to  
20 that but I think that's a very reasonable inference to draw.

21 Q. So you make an inference that SB 1 will increase  
22 lines. You do not, however, have any studies?

23 A. No, I don't have any studies on that.

24 Q. And do you allege in your report that SB 1 makes it  
25 more difficult for a voter to read or see the ballot?

1 A. No.

2 Q. Do you allege SB 1 makes it more difficult for a  
3 voter to get inside the polling place?

4 A. No. What I'm alleging is that it makes it more  
5 difficult to find assistance in overcoming that kind of  
6 barrier.

7 Q. You also provide in paragraph 75, a variety of  
8 examples of people across the country, and this is highlighting  
9 the different types of barriers at polling places. Is that  
10 correct?

11 A. Yes.

12 Q. Do you know if any of these individuals live or voted  
13 in Texas?

14 A. I don't think any of those cases come from Texas, no.

15 Q. Okay.

16 A. If I could just add a note on this, that my  
17 analysis -- I'm very much of a statistical person. I do a lot  
18 of analysis of large scale data sets, and I particularly like  
19 large scale representative data sets which have advantages --  
20 many advantages of being representative, of course, you can  
21 arrive at stronger conclusions. Also, these datasets are  
22 typically anonymous, in which people are more likely to be  
23 truthful. So I think large scale data sets give us very  
24 powerful data.

25 But I do like to add individual anecdotes like this

1 people with cognitive disabilities will have more difficulty  
2 adapting to something new if they've gotten used to one method  
3 of doing things.

4 Q. So in that case, would a person with a cognitive  
5 disability find it difficult to revert back to, let's say, the  
6 old standard if they had become adapted to the new rules under  
7 SB 1?

8 A. Possibly. I don't think -- as I interpreted the SB 1  
9 is creating new barriers to obtaining assistance for people  
10 with cognitive impairments. I don't know that the -- that this  
11 would create more difficulties in going back to a system with  
12 less -- with less risk -- with fewer restrictions on systems.  
13 Yeah --

14 Q. One of the reasons --

15 A. I don't know --

16 Q. I'm sorry. I didn't mean to interrupt.

17 A. No, go ahead.

18 Q. One of the reasons I'm bringing this up is because  
19 we're going to be talking in a few moments, probably after our  
20 next break, about the different provisions of SB 1, and that  
21 includes the identification number on the application vote by  
22 mail, as well as the mail-in ballot. And so, I imagine that

23 it's your position that individuals with disabilities would  
24 have difficulty adding the new information. Is that correct?

25 A. They're likely to have more difficulty adding that.

1 Yes. If we go back to the old system -- you were suggesting  
2 that switching back to the old system might cause problems, it  
3 would seem that eliminating that new requirement wouldn't cause  
4 a problem in going back to the old system for someone with  
5 cognitive impairment.

6 Q. Do you think it's an implementation issue that once  
7 people with cognitive disabilities became more familiar with  
8 the requirement of putting an ID number on the ballot, that the  
9 error rates would decline and their difficulty adept -- or  
10 difficulty complying with that provision would decline?

11 A. That's possible. I really can't speak to that. I'm  
12 not an expert in the adaptability and learning abilities of  
13 people with cognitive impairments.

14 Q. And so you also have here a postage expense and  
15 mailing the ballot in locations where stamps are required to  
16 return a ballot. Are you aware of Texas -- that Texas counties  
17 often provide prepaid postage?

18 A. No, I'm not aware of that in Texas. You say Texas  
19 counties often provide it but they don't always provide it?

20 Q. That's correct. It's not a requirement that they  
21 provide it; and I was simply wondering if you were familiar  
22 with the practice, or its -- how frequently that practice is  
23 done in Texas?

24 A. Oh, I'll be totally honest. I just learned this last  
25 year that there are people who have to put stamps on mail

1 in front of you as well, this way we can look at them side by  
2 side.

3 A. My report? Okay.

4 Q. Yeah. Because we're going to be talking now about  
5 your review of certain sections within SB 1.

6 A. Sure.

7 Q. We're going to start with sections 5.02, 5.03, 5.06,  
8 5.07, 5.10, and 5.12. Do you see that in your report?

9 A. I do. Actually, can I go back and make one comment  
10 about section 1.022?

11 Q. Sure.

12 A. My point here is that people with disabilities still  
13 have the ADA sections they had before SB 1 and this is  
14 affirming that they can request a reasonable accommodation, but  
15 to the extent that SB 1 creates new barriers that does not --  
16 it says we're recruiting new barriers, but you can request for  
17 reasonable accommodation those barriers. We're requesting  
18 reasonable accommodation, and so there's a barrier. There's an  
19 extra step people have to go through to request. So it -- it  
20 complicates. It makes it harder to vote if you have to request  
21 a reasonable accommodation to these new barriers that have been  
22 created by SB 1.

23 Q. Okay. So it's your --

24 A. That's just a point I wanted to make.

25 Q. So, it's your position that the act of requesting an

1 accommodation is itself a barrier. Is that correct?

2 A. It's creating a new barrier. It's creating -- it's  
3 creating an extra cost. As an economist, I think in terms of  
4 costs and benefits, and it's creating an extra cost in time and  
5 effort.

6 Q. All right. Let's look at section 5.02.

7 A. Okay. What page are we on in the legislation?

8 Q. I'm try to find that.

9 MS. SWEREN-BECKER: I believe it's page 33 in the  
10 version that we have before us.

11 MS. HUNKER: Yes. It's the same with the one on the  
12 screen.

13 Q. (BY MS. HUNKER) So, I guess my initial question  
14 looking at section 5.02, in what way does this create a barrier  
15 for individuals with a disability?

16 A. This creates an extra requirement that someone has to  
17 go through in order to apply for a mail ballot -- it creates an  
18 extra requirement. And combined with another provision, I  
19 forget which number it is, if there's a defect, if someone  
20 doesn't remember what they initially put down in their original  
21 registration application that creates complications in trying  
22 to cure the defect if it can only be done online or in-person  
23 after a certain date; so that's the problem that I see there.

24 Q. Okay. So for you, it's the fact that there's an  
25 additional requirement. Now, would it be a barrier if you



1 were -- if there were any additional requirements with respect  
2 to an application to vote by mail?

3 A. Any additional requirements such as?

4 Q. Like any additional information that would be needed  
5 on the ballot?

6 A. It's hard to answer that. There may be some extra  
7 information that is really trivial and easy to add. In that  
8 case, simply asking for one bit of extra information is not --  
9 would not be a substantial burden at all. Asking for this  
10 information, particularly when it has to be validated against  
11 the information used in the original registration application,  
12 that can be a real problem. "Geez, what did I -- do I use my  
13 driver's license? Where's my electronic identification  
14 certificate? I know I filed that somewhere. Where is that  
15 darn thing?"

16 Q. Are you aware that you're required to put an  
17 identification number on your voter registration form in Texas?

18 A. Yes. On your registration form? I -- yes.

19 Q. Is it your position that it is not a barrier to  
20 vote -- to register to vote to require to have an  
21 identification number, but that it is a barrier for an  
22 application vote by mail?

23 A. It's a barrier that the two have to match. There may  
24 have been several decades passing since one did the original  
25 registration application; and it's a barrier that if it doesn't

1 match, then correcting that can impose some significant costs.

2 Q. Is it your belief then that the number that's put on  
3 the application has to match -- has to be the exact number that  
4 was used on the registration application?

5 A. That's -- that's my reading of it that the number has  
6 to match for this to be a valid application for an absentee  
7 ballot.

8 Q. And are you aware that it has to match any number  
9 that's within the voter registration file?

10 A. I'm sorry? That what has to match any number.

11 Q. The number that is placed on the application to vote  
12 by mail. So to give you an example: When I registered to  
13 vote, I put my social security number because I did not yet  
14 have a Texas license.

15 A. Okay.

16 Q. Several years later, I was not going to be in the  
17 county and I requested an application to vote by mail. I put  
18 my driver's license down, as opposed to my social security  
19 number. Are you aware that so long as the driver's license is  
20 within the voter registration file, regardless of whether it's  
21 the number I put on my application form, that it would be  
22 accepted?

23 A. I'm trying to understand the system. You can put  
24 multiple numbers down in the system? Multiple numbers can  
25 exist in the system, and you just have to pick one and if it

1 knowledge of whether people with disabilities are more or less  
2 likely to cancel an application after they've -- after they've  
3 received an early voting ballot. So no, I don't know that  
4 that -- I don't have any knowledge about how that would -- how  
5 that would play out.

6 Q. Okay. So you don't have any information that you  
7 articulate in your report that would suggest that section 5.06  
8 impedes voters with disabilities in voting. Is that correct?

9 A. No, that is not correct.

10 Q. Please clarify. I misheard?

11 A. The -- oh, I'm sorry. Yeah, 5.06 by itself, I don't  
12 have -- I think -- I don't have any particular information  
13 about how that would pose a problem. I think in conjunction  
14 with the other restrictions on voting by mail, that those  
15 combined can create some barriers to people with disabilities.

16 But taking that one in isolation, I can't say definitively that  
17 that will establish a significant barrier.

18 Q. Okay. So you said a lot right there and I want to  
19 see if I can hone it down at its core. You don't allege in  
20 your report or have information in your report that section  
21 5.06 taken as an individual provision impedes voters with  
22 disabilities in their ability to vote. Is that correct?

23 A. I don't have knowledge that people with disabilities  
24 are more likely to cancel an application once they make it. As  
25 I said, it seems to me like this would be pretty, pretty rare

1 for any voter to request one, receive one, and then say, "Oops,  
2 I changed my mind. I'm going to go vote in-person." That  
3 would seem like a pretty, pretty unlikely situation.

4 Q. Okay. So you don't have any evidence that this would  
5 impede voting disabilities?

6 A. No, I don't have any evidence on this one. No.

7 Q. And are you aware of -- you're not aware of how  
8 frequently this situation occurs. Correct?

9 A. Correct.

10 Q. And you're not aware of if election judges, prior to  
11 SB 1, were uncertain if they could allow voters who failed to  
12 return their mail in ballot to vote at all. Is that correct?

13 A. Right. Yes.

14 Q. And so, you don't know if this was to address a  
15 problem of election judges turning away voters because they  
16 canceled their mail-in ballot application but failed to return  
17 their mail-in ballot. Is that correct?

18 A. That's correct.

19 Q. Let's look at section 5.07. Do you have it in front  
20 of you? It's on the same page and then goes into the next one,  
21 as well.

22 A. Yes, I do.

23 Q. Can you please articulate to me how this particular  
24 provision impedes voters with disabilities and their ability to  
25 vote?

1           A.     This is what I was talking about before that the  
2     subsection of 5.07, paragraph F there, the new added one. "If  
3     the information required under Section 84.02A included on the  
4     application does not identify the same voter identified on the  
5     applicant's application for voter registration, the clerk shall  
6     reject this application."

7           As I said before, people with disabilities may have  
8     registered -- they tend to be older -- they may have registered  
9     several decades ago. They may not have the original  
10    information they -- that they had on the -- on the original  
11    application. So there's -- they may not be able to find those  
12    records, particularly, if they're in a group setting. If  
13    they're an institution, they may have a -- they may no longer  
14    have their records. They may have a hard time getting  
15    assistance to help in finding the records.

16          So I think the likelihood of someone having this  
17    problem of not identifying -- that they're not identified as  
18    with the same number, the same information on the original  
19    application, I think that problem is very likely to be higher  
20    for people with disabilities given their age, and given the  
21    cognitive disability, cognitive impairment, difficulty  
22    remembering, concentrating, or making decisions. Well,  
23    remembering, obviously, is a big part of this -- remembering  
24    what kind of information you put on your original application.  
25    So I think it's very likely that people with disabilities will

1 be disproportionately impacted by this.

2 Q. And so is that a byproduct of the age of individuals  
3 with disabilities as opposed to necessarily them being  
4 disabled?

5 A. It's both age and cognitive impairment.

6 Q. And so you read section F, in particular, as  
7 requiring the same number that was on the application. Is that  
8 correct?

9 A. Yes.

10 Q. And that interpretation you secured from your reading  
11 of the text and statute. Correct?

12 A. Yes.

13 Q. And you did not consult with any other source or  
14 person with respect to coming to this interpretation. Is that  
15 right?

16 A. That's correct.

17 Q. And you haven't spoken to voters with disabilities in  
18 Texas with respect to Section 5.07. Is that right?

19 A. That is correct.

20 Q. And so you've not communicated or asked them about  
21 their personal experience and the barriers they may have  
22 experienced as a result of section 5.07. Is that correct?

23 A. That is correct.

24 Q. And you have a --

25 A. If I could just add that another important component

1 of section 5.07, of course, is the processes for curing the  
2 rejection. And there -- the next paragraph at line 4 on page  
3 39 -- describes an online tool. As I point out in my  
4 testimony, people with disabilities are less likely to have  
5 access to the internet. 15% of people with disabilities live  
6 in homes without internet access, and 40% of those in Texas do  
7 not use the internet from home or any location, so that's a  
8 problem for those people. It also says that this can be done  
9 in-person. Wait, is that right here?

10 Q. Where are you in the statute?

11 A. Okay. I'm sorry. I was thinking of another place  
12 where it talked about how you could cure a defect by bringing  
13 in -- like, bringing a -- by coming in-person. Here it just  
14 describes the online tool. And I think simply that, you know,  
15 the 40% of people with disabilities in Texas that don't use  
16 internet means that there's no problems with carrying the  
17 defect that way.

18 Q. So do you see subsection F2, which is I believe what  
19 you were talking about, "If an applicant corrects an  
20 application for a ballot to be voted by mail online." Is that  
21 what you were talking about?

22 A. Yes. The online tool and then -- yes.

23 Q. Do you see where it says "If an applicant corrects an  
24 application for a ballot to be voted by mail"? Does it use the  
25 word "if"?

1 A. Yes.

2 Q. So the word "if" indicates that it's an option.

3 Correct? Not the only method?

4 A. It doesn't necessarily indicate it's an option. It  
5 doesn't -- that doesn't indicate that there are other options.  
6 It simply says online tool is available. I don't see that this  
7 specifies that there have to be other options.

8 Q. Is an assumption that you made when drafting this  
9 report that the online tool referenced in section 5.07 of SB 1  
10 is the only option by which a voter may cure an application to  
11 vote by mail?

12 A. No. There was another place -- and I'm sorry, I'm  
13 forgetting exactly where it was -- where it says that that can  
14 be cured by coming in-person. If there's substantial -- enough  
15 time before the election, a person can be mailed the  
16 information and they can correct it by mail; but if there's not  
17 enough time to cure it before the election, then they have to  
18 come in-person, and that creates a barrier for people with  
19 travel limitations as we talked about before. So there's -- if  
20 you don't have enough time before the election to cure it by  
21 mail, then you have to use it online -- use the online tool or  
22 travel in-person; and there are many people with disabilities  
23 who have problems with those -- who find those to be barriers  
24 to do that kind of curing.

25 Q. Dr. Kruse, are you aware that the particular



1 in the mail by the early voting clerk, have the person's  
2 Official Ballot receipt by the early voting clerk on the  
3 person's marked ballot, that acceptance or rejection of the  
4 early voting ballot board of the persons marked ballot." Did I  
5 read that correctly?

6 A. Yes.

7 Q. And that section was already there. Correct?

8 A. Right.

9 Q. And so here you have an online tool that preexisted  
10 SB 1. Correct?

11 A. Yes.

12 Q. And how does allowing a voter to make corrections  
13 burden somebody's right to vote?

14 A. Taken on its own, the -- allowing someone to use that  
15 online tool does not create a burden. It is taken in  
16 conjunction with the -- with the other procedures. A lot of  
17 people with disabilities, as I said, don't have access to that  
18 online tool. So this particular provision taken on its own  
19 doesn't create a problem, it's, again, in conjunction with the  
20 other provisions. This just illustrates a method that will not  
21 be available to many people with disabilities.

22 Q. But so long as there are other options in which a  
23 voter would be able to correct information, the fact that a  
24 voter with a disability couldn't use one option, namely the  
25 online tool, would not be an impediment. Isn't that correct?

1 A. If the other options are easily accessible, yes.

2 Q. Okay. And so, the issue is making sure that there  
3 are multiple options as opposed to the online tool itself being  
4 a problem. Is that correct?

5 A. Yes. That's one of our basic points is the more  
6 options, the better. This -- these provisions seem to be  
7 focused on this online tool and my point is that the online  
8 tool will not be useful to a large number of people with  
9 disabilities.

10 Q. Okay. And so is your conclusion that the online  
11 tool -- in this case, specifically the one referenced in  
12 section 5.10 of SB 1, impedes voters access only to the extent  
13 it is the only option available?

14 A. A voter with a disability may have several options.  
15 There may be barriers to each of them. I think having this --  
16 having an online tool in itself doesn't create a problem. It  
17 may create a useful option for some people. But the online  
18 tool for someone who is homebound, does not have internet  
19 access, is not able to travel, they may have very few options  
20 for curing a defect on the ballot in the application.

21 Q. So, in that case, eliminating an online tool wouldn't  
22 aid a voter with disabilities. Instead, what you're looking  
23 for is to expand the options that are available for everyone  
24 with disabilities. Is that fair to say?

25 A. That's fair to say. I have no objection to online

1 tools. I use online tools all the time and myself.

2 Q. Let's scroll down to section 5.12, and this is on  
3 page 43. Let me know when you arrive there.

4 A. I'm here.

5 Q. Okay. Do you see how section 5.12, which amends  
6 section at 87.0271 of the election code, is entirely  
7 underlined?

8 A. Yes.

9 Q. Are you aware of what the cure process was for an  
10 applicant -- for a mail-in ballot prior to SB 1?

11 A. No.

12 Q. Would it surprise you to learn that there was no real  
13 cure process for a mail-in ballot prior to SB 1?

14 A. No -- no fair process?

15 Q. No cure process prior to --

16 A. Oh, no cure process. That's interesting. Okay.

17 Q. So you were not aware that this adds a cure process  
18 to the election procedures. Is that correct?

19 A. I was not aware of the cure process beforehand, or  
20 the lack of one.

21 Q. And so can you please explain to me how section 5.12  
22 impedes a voter with disabilities?

23 A. It impedes voters with disabilities by -- this is a  
24 spot where it says the person asked to do it either online or  
25 correct the defect in person; and I think that that creates a

1 problem for homebound people who have travel difficulties and  
2 who don't have online access.

3 Q. Are you aware of how injunctions work generally?

4 A. I'm familiar with the broad concept. Yes.

5 Q. Okay. And so you're familiar that with an injunction  
6 that basically prevents the state, or whatever government  
7 entity exists, from enforcing a provision or implementing a  
8 provision?

9 A. Right.

10 Q. So it refrains action as opposed to requiring action.

11 A. Right.

12 Q. Do you agree with that?

13 A. Sure.

14 Q. Okay. You've described the injury here as there  
15 being not enough options for voters with disabilities. Is that  
16 correct?

17 MS. SWEREN-BECKER: Objection. Misstates testimony.

18 A. Yeah, I didn't say that was the -- the injury that  
19 there weren't enough options. I'm saying there should be more  
20 options.

21 Q. (BY MS. HUNKER) Okay. So you're saying there should  
22 be more options? That's your -- that's your objection with  
23 this particular section?

24 MS. SWEREN-BECKER: Objection. Misstates testimony.

25 A. Yeah. My objection is that this does not provide

1 good options for someone who's homebound, who does not have  
2 internet access, and who does not -- and who has difficulty  
3 traveling to be able to cure a defect.

4 Q. (BY MS. HUNKER) Is having some option to cure better  
5 for voters with disabilities than having no option to cure?

6 A. Having extra options is good. Yes.

7 Q. Okay. And so you would agree that having some option  
8 to cure is better for voters with disabilities than not having  
9 an option to cure. Is that correct?

10 A. Right. I don't think they -- I doubt they never had  
11 an option to cure. There was -- you were suggesting that they  
12 never had an option to cure, and now they have some option. I  
13 highly doubt that that was the case beforehand, that they had  
14 no option to cure.

15 Q. So you assumed in arriving at your conclusions that  
16 there was an option to cure that predated this. Is that  
17 correct?

18 MS. SWEREN-BECKER: Objection to form. Misstates  
19 prior testimony.

20 A. I was not aware of the previous process to cure. I  
21 was looking at the language that has been added here on the  
22 curing process and I think it creates barriers for many people  
23 with disabilities -- it potentially creates barriers for many  
24 people with disabilities.

25 Q. (BY MS. HUNKER) Assuming there was no cure option

1 prior to SB 1, would eliminating the ability to cure a ballot,  
2 online or in-person, impede or advance the ability of voters  
3 with disabilities to vote?

4 MS. SWEREN-BECKER: Objection to form.

5 A. I'm sorry. Yeah. I don't quite understand.  
6 Assuming there is no cure option --

7 Q. (BY MS. HUNKER) Assuming -- that's correct.

8 Assuming that my characterization is correct, that there was no  
9 cure option prior to SB 1, would eliminating the ability to  
10 cure a ballot online, or in-person, impede a voter with  
11 disability? Or would it advance the ability of a voter with  
12 disabilities?

13 MS. SWEREN-BECKER: Same objection.

14 A. Yeah -- no, I don't -- I don't -- I think the  
15 important thing is that SB 1, the prior provision that we  
16 discussed already, is making it more likely that there are  
17 going to be ballots that need to be cured. That's going to  
18 fall upon people with disabilities. The options that are being  
19 presented are not -- are not adequate. The options that are  
20 being presented create barriers. Yes, it's good to have more  
21 options for people to cure but at the same time, it is also  
22 creating more need to cure which creates special problems for  
23 many people with disabilities.

24 Q. (BY MS. HUNKER) So, the -- this provision, though,  
25 does not create the conditions that would require more ballots

1 to be cured. Is that correct?

2 A. On its own, this provision does not create that  
3 condition. It's in combination with the previous provision  
4 that creates a greater likelihood the ballots will need to be  
5 cured. This is an inadequate response to that.

6 Q. Are you familiar with the way Texas established  
7 identity of a voter and mail-in ballot prior to SB 1?

8 A. No.

9 Q. Are you aware that they used a signature match  
10 mechanism?

11 A. That's not surprising to me, but no, I did not know  
12 that specifically, but that's not surprising to me.

13 Q. Would individuals with disabilities have problems  
14 providing a matching signature?

15 A. They often do. Particularly with degenerative  
16 conditions, Parkinson's, and so forth that may make the  
17 signature deteriorate over time.

18 Q. So for certain types of disabilities, a signature  
19 match would be an impediment. Is that correct?

20 A. It can create problems, yes.

21 Q. Would it be fair to say then that some people with  
22 disabilities, being required to put your voter ID number as  
23 opposed to using a signature match would be an easier way to  
24 establish their identity?

25 A. I think the more options, the better for establishing

1 ballot to vote by mail. I was wondering if that was the same  
2 here where section 5.12, the injury stems from its interactions  
3 with the other provisions, as opposed to section 5.12 on its  
4 own?

5 A. Yes, I think that's right. It's a problem that the  
6 rejection rate is going to be higher as a result of SB 1, and  
7 the options for remedying those defects are inadequate for many  
8 people with disabilities.

9 Q. Okay. And so it's the inadequacy of the cure process  
10 as with respect to the requirements, and not the cure process  
11 itself that you object to. Is that correct?

12 MS. SWEREN-BECKER: Objection to form. Misstates  
13 testimony.

14 A. It's -- together these provisions are setting up new  
15 barriers. The options to correct, I say, are inadequate. So  
16 overall, taken together, these provisions are creating greater  
17 barriers, greater costs, for people with disabilities and  
18 exercising the right to vote.

19 MS. SWEREN-BECKER: Kathleen, if and when you're  
20 prepared to move past section five, I think we'd like to take a  
21 break. I don't know where you are.

22 MS. HUNKER: Yeah, no, that's good. I only have a  
23 few questions with respect to this section and then we'll  
24 probably wrap up by talking about section six and seven.

25 MS. SWEREN-BECKER: Okay.



1 A. No, I'm relying on the large survey data. I'm not  
2 aware of any specific person.

3 Q. Okay. Let's look then at section 6.01.

4 A. Okay.

5 Q. And this is on page 50. And then it says, "A person  
6 who simultaneously assists seven or more voters, voting under  
7 this section by providing the voters with transportation to the  
8 polling place must complete and sign a form." Did I read that  
9 part correctly?

10 A. Yes.

11 Q. And so how does this impede a voter with disabilities  
12 ability to vote?

13 A. First of all, I think it's very -- we don't have  
14 direct data on how people are transported to the polls. I  
15 think it's very likely that people with disabilities will be  
16 disproportionately represented among groups of seven or more  
17 being taken to the polls because people with disabilities are  
18 more likely to live alone, they're more likely to face  
19 transportation problems; so I think they're more likely to be  
20 represented in that group. The barrier that this creates is, I  
21 believe, it would make drivers leery or nervous about voting --  
22 about taking someone to the polling place.

23 Let me just give an example. My mother lives in a  
24 senior apartment complex in Omaha, Nebraska. She has a -- they  
25 have a bus driver who takes them to shop once a week. If this

1 bus driver -- and I don't know that he does this -- but if this  
2 bus driver were to take someone to the polls under the -- under  
3 SB 1, he might be nervous about signing a form like this,  
4 because it would appear from my reading of it that if the  
5 person does provide assistance to anyone, then that person  
6 would be subject to the assisters oath, and there'd be a  
7 question as to whether they would run afoul of the language  
8 about providing only the assistance in reading or marking a  
9 ballot.

10 Say that an assister -- I'm sorry -- say that a  
11 driver takes people to a polling place and lets them off. If  
12 that driver just drives away, fine, but poor old, you know,  
13 Miss Beasley is having a struggle getting into the polling  
14 place, so the driver goes and helps her in. Well, then he has  
15 to take the oath, and it may be the type of assistance he gave  
16 her in navigating the polling place violates what's allowed  
17 under SB 1.

18 So, all of that is to say that I can see a driver who  
19 understands this law to be concerned about what he's opening --  
20 he or she is opening himself or herself up to. So that's why I  
21 think there could be some reluctance of drivers to do this.

22 Q. So you don't have any direct data on how many voters  
23 with disabilities -- what percentage of voters with  
24 disabilities are provided -- are transported to the polls in  
25 groups of seven or more. Is that correct?

1           A.     That's correct. I don't have any data set that has  
2 information on how people are transported to the polls in  
3 general, whether it's seven or under.

4           Q.     Okay. And so you don't know how frequently that  
5 occurs in Texas. Is that correct?

6           A.     That's correct.

7           Q.     And did your research actually study on whether  
8 requiring drivers to fill out a form will reduce the number of  
9 drivers available?

10          A.     No.

11          Q.     And so you don't assess that with using any metrics  
12 in the report. Is that correct?

13          A.     That's correct. I cannot put a number to it because  
14 there just isn't data on that.

15          Q.     Okay. And so it's your hypothesis that voters will  
16 be -- certain drivers will be leery of signing a registration  
17 form. Is that correct?

18          A.     It's my reasonable expectation based on the  
19 transportation and social isolation barriers faced by people  
20 with disabilities, that they would be more likely to be using  
21 this -- using a transportation loaded with seven or more  
22 people.

23          Q.     So my question was a little different. My question  
24 was talking about the driver.

25          A.     Oh, okay. Right.

1 Q. And so you are -- I mean, I don't want to use the  
2 word speculating but you're hypothesizing that your -- that  
3 drivers would be less likely to drive a voter because of a  
4 requirement that they sign their name?

5 A. Yes. I am putting myself in the place of a driver  
6 and thinking about what kinds of worries I might have about  
7 signing this form.

8 Q. But you don't have any specific data backing that up.  
9 Is that correct?

10 A. That's correct.

11 Q. And you also said that you thought a person might be  
12 leery because it would require them to sign the oath. Is that  
13 correct?

14 A. Yes.

15 Q. And is it your understanding --

16 A. But --

17 Q. I'm sorry. I didn't realize you were --

18 A. But that -- if they -- from my reading of it, if they  
19 simply took someone to the polling place and let them out the  
20 door, go on with you, go have a good time voting, then they  
21 wouldn't be liable; but so many people with disabilities,  
22 elderly people, need help getting inside. So once that starts  
23 the -- I think they would be leery about being subjected to the  
24 assisters oath, and the proper and improper forms of  
25 assistance.

1 unable to find assistance to vote because of the oath. Is that  
2 correct?

3 A. That's correct.

4 Q. Okay. Now, you use the sentence, "This does not  
5 allow the assister to explain the voting process and choices."  
6 What do you mean by explaining the choices?

7 A. That here's -- here's the people lined up in  
8 different columns, here is candidate A, candidate B, candidate  
9 C. For someone who may have, in particular, a cognitive or  
10 developmental disability, knowing how the rows and columns work  
11 may be a little confusing. So explaining what choices you  
12 have, you know, you pick one person in row A, one person row B,  
13 for example; or one person in column A, column C, depending on  
14 how it's set up. Yeah, I think -- that's what I'm talking  
15 about.

16 Q. Okay. So you're talking about the mechanism of  
17 voting as opposed to the substance of, let's say, the  
18 proposition or the candidates that are being presented for the  
19 voting. Is that correct?

20 A. Yes. That sounds -- I'm just talking about the  
21 explaining of the mechanisms.

22 Q. Okay. And so later on when you say, "In my expert  
23 opinion, this is likely to interfere with people with  
24 disabilities ability to vote, in particular for the 1,082,500  
25 Texans with cognitive impairments who are eligible to vote and

1 other people with developmental disabilities who benefit from  
2 assistance in making informed choices in important areas of  
3 life." When you use the term "informed choices", are you  
4 talking about the same -- is this basically a synonym of what  
5 you were talking about before about explaining choices?

6 A. No. Here I'm talking about some of the substance  
7 that people will want to know. Here I'm thinking particularly  
8 of ballot propositions. What does this mean? People may be  
9 unclear about how something is worded, especially if it's not  
10 worded in a very simple way. And someone who knows the person  
11 can easily say, "Oh, here's what that means. Here's how to  
12 understand it," and that can be a valuable form of assistance.

13 And as I said before in my testimony, that can  
14 facilitate the exercise of autonomy. It can help people  
15 understand better what their choices are, so they make a better  
16 informed choice.

17 Q. Okay. So in this case, you're actually talking about  
18 explaining the substance of the provision itself -- of the  
19 proposition itself?

20 A. In this case, yes.

21 Q. And have you given any thought of what safeguards  
22 will be necessary to ensure that the person stopped at simply  
23 explaining what the proposition is, as opposed to weighting one  
24 way or the other how that person should vote?

25 A. I think the main safeguard is that the person be a

1 trusted assistant, particularly a family member, or close  
2 friend; someone that the person with a disability agrees to. I  
3 think that's the main safeguard to make sure that that person  
4 is available.

5 If that person is nervous about signing the oath,  
6 regarding what kind of assistance they can give, then the  
7 person with disability may be stuck with an election official  
8 or somebody else who they don't know as well and they don't  
9 necessarily trust as well, so I think that can create problems.

10 Q. So in your testimony, as well as earlier in our  
11 discussion, you had explained that voters with disabilities  
12 tend to be more socially isolated than voters without  
13 disabilities. Is that right?

14 A. Yes.

15 Q. And so there are some voters who do not have a  
16 trusted person that they could rely on to become an assister.  
17 Is that correct?

18 A. Right. The fact that they don't -- that they live on  
19 their own doesn't mean that they don't necessarily have a  
20 trusted assister but I think it's true that people are more  
21 socially isolated, so they're less likely to have close people  
22 who they will trust. Yes.

23 Q. And so, in the case of an individual who doesn't have  
24 a trusted assister that they know, what -- have you given  
25 thought of what safeguards would be necessary to ensure that

1 disclose receipt of benefits would decrease the likelihood that  
2 they would be willing to provide assistance. Is that correct?

3 A. I can't put a number on that. It's an extra  
4 requirement that raises the cost of voting, the likelihood that  
5 someone will not be able to find adequate assistance, someone  
6 who's very socially isolated -- pardon me, my economics test is  
7 starting in a short bit. But it's all online and it's all  
8 pre-programmed. Let's see -- what was I saying?

9 MS. SWEREN-BECKER: Dr. Kruse, would it be helpful  
10 for the court reporter to read back what you were saying?

11 THE WITNESS: Yes, can you read back what I was  
12 saying, please?

13 MR. MORALES-DOYLE: I don't know what you all can  
14 hear but Doug's last comment was a reference to a chime going  
15 off on his computer. I don't know whether it's possible to  
16 note that in the record only because the comment about his  
17 student's test might be a little bit confusing in the  
18 transcript without.

19 THE WITNESS: Yeah. I was just going to say I think  
20 I remember where I was going with this.

21 A. My concern is with this provision that people who are  
22 isolated, people who have traveled limitations, people with  
23 disabilities in those categories, may not have many options for  
24 assistance. And it may be that someone who is being paid by  
25 one of these committees can -- or by one of these sources -- is



1 the best available option for them.

2 As I've said before, the general principle, I think,  
3 is the more options, the better. And there is no -- there's no  
4 implication here that their vote is being compromised in any  
5 way. They're voting for themselves, they're just receiving  
6 assistance from someone who happens to be compensated for  
7 providing that assistance.

8 Q. (BY MS. HUNKER) And so you mentioned that for some  
9 people this might be the best option available. Is that right?

10 A. Yes.

11 Q. And do you have any studies on for how many voters  
12 with disabilities that would be the best option?

13 A. No, I don't.

14 Q. And that's not in your report. Correct?

15 A. That's not in my report. Right.

16 Q. And you wouldn't have that number with respect to  
17 Texas. Correct?

18 A. Right.

19 Q. And you don't have data that states the likelihood  
20 that an assister would be discouraged, even if they're being  
21 compensated?

22 A. Correct. I cannot put a number to it.

23 Q. I think you said "they may be." Is that correct?

24 A. Yeah. This is raising -- raising the costs. It's  
25 hard to put a number to exactly how this will affect behavior,

1 large population, any large scale survey, data, the techniques  
2 are the same. Doing basic comparisons of means across tabs and  
3 so forth, but also using regressions to control for other  
4 influences on voter turnout; so the techniques are very much  
5 the same.

6 Q. (BY MS. SWEREN-BECKER) And the data that you had  
7 available to you, with respect to Texas specifically, is it  
8 correct that there were sufficient -- that the datasets were  
9 large enough for you to generate conclusions that you had  
10 confidence in?

11 A. Yes. As I say in the report, the standard sample  
12 size for a -- to be confident of conclusions is a thousand. In  
13 a couple of places, I had datasets of less than a thousand,  
14 which is why I supplement the data in those cases with some  
15 national data; by supplement, I mean, provide a comparison  
16 between Texas and the US data.

17 Q. Is it a commonly accepted practice to extrapolate  
18 from national data on people with disabilities to state-based,  
19 or in this instance, Texas data with respect to Texans with  
20 disabilities?

21 MS. HUNKER: Objection to form.

22 A. It's certainly common. And in fact, the -- I have  
23 quite a bit of confidence that results from analysis of US data  
24 are applicable to Texas, given that the disability population  
25 in Texas looks a lot like the disability population nationally,

1 in terms of the distribution of types of impairments, severity  
2 impairments, demographics, and so forth. Of course, there are  
3 differences now and then, but overall, the disability  
4 population looks a lot like -- in Texas, looks a lot like the  
5 national disability population, so I think it's very reasonable  
6 to extrapolate the national results to Texans with  
7 disabilities.

8 Q. (BY MS. SWEREN-BECKER) You testified earlier that  
9 the data from the SIPP and NHTS surveys contained results from  
10 noncitizens. Do you recall that?

11 A. Yes.

12 Q. Or I should clarify that noncitizens respond to those  
13 surveys. Is that correct?

14 A. Right. It's the total voting age population that may  
15 includes noncitizens.

16 Q. And does the inclusion of noncitizens as respondents  
17 there affect the conclusions that you reached in your report?

18 A. The noncitizens, I think I mentioned, tend to be --  
19 noncitizens are less likely to have disabilities. To the  
20 extent that they are excluded, it will not materially affect  
21 the disparities I see. And as I mentioned, when I do  
22 comparisons with ACS between citizens and noncitizens, I find  
23 the similar disparities in employment, travel -- I'm sorry, not  
24 travel -- in employment, income, all the demographics, and so  
25 forth.

1 Q. And do you recall testifying and noting in your  
2 report that the SIPP data is from 2014?

3 A. Yes.

4 Q. And what effect, if any, does that have on the  
5 estimates with respect to people with disabilities?

6 A. The rate of disability, in general, is going up as  
7 the population ages. We talked about that briefly. As us baby  
8 boomers are getting older -- I am one of the late baby  
9 boomers -- and as the population, as the baby boomer cohort is  
10 moving forward, the population is getting older, in general,  
11 that leads to a higher rate of disability. Therefore, the SIPP  
12 numbers from 2014 showing 30.5% of Texans with disabilities is  
13 likely, if anything, to be an underestimate of the figure for  
14 2022.

15 Q. You testified earlier and state in your report that  
16 the increased use of voting by mail in 2020 accounts for a  
17 decrease in the participation gap for voters with disabilities.  
18 Is that right?

19 MS. HUNKER: Objection. Leading.

20 A. Yes.

21 Q. (BY MS. SWEREN-BECKER) Is that an accurate  
22 restatement of your testimony?

23 A. Yes, that the voting by mail was able to -- voting by  
24 mail, when we compare among states that expanded the access to  
25 vote by mail versus those that did not, the states that have

1 expanded access to vote by mail had greater increases in the  
2 turnout of people with disabilities; so that seemed to enhance  
3 the turnout of people with disabilities.

4 Q. Is it fair to say that voting by mail makes voting  
5 more accessible for people with disabilities, generally, even  
6 though their disabilities are not uniform in type and severity?

7 A. Oh, yes. Yes, that's fair to say. The voting by  
8 mail is a good option for many people with disabilities,  
9 especially those with mobility impairments, difficulties going  
10 outside alone for any reason. It -- as I said before, the more  
11 options the better for increasing turnout with people with  
12 disabilities, and making it easy to vote by mail seems to be an  
13 important way to ensure greater access for people with  
14 disabilities.

15 Q. And is it fair to say that for some portion of voters  
16 with disabilities voting by mail is the only accessible method  
17 of voting?

18 MS. HUNKER: Objection to form. Leading.

19 A. Yes, I believe it's fair to say that there are many  
20 people who are homebound, and who will find voting by mail to  
21 be the only realistic alternative. It would be very, very  
22 costly for some people from a time, and energy, and just  
23 physical capability perspective to go out and vote to the  
24 polling place.

25 MS. SWEREN-BECKER: Dr. Kruse, I just want to remind

1 you that after I ask a question to make sure to wait for me to  
2 finish and give an opportunity for counsel for the State to  
3 object for the record, so that the court reporter can capture  
4 everything that we're saying. I know we're speaking quickly  
5 and it's been a long day but --

6 THE WITNESS: I understand. I'm sorry I spoke over  
7 you.

8 MS. SWEREN-BECKER: Not to worry.

9 Q. (BY MS. SWEREN-BECKER) Moving on, you testified and  
10 your report states -- is it an accurate summary that you  
11 testified and your report states that the new requirement to  
12 include certain ID numbers with applications for mail ballots,  
13 and with the mail ballots themselves, constitutes a barrier for  
14 voters with disabilities? Is that an accurate summary?

15 A. Yes.

16 Q. And is it fair to say then that the simultaneous  
17 creation of a process to cure errors that arise from those new  
18 barriers, that that cure process does not itself aid voters  
19 with disabilities?

20 MS. HUNKER: Objection to form.

21 A. Yes, as I said before, taken in combination, there  
22 are new processes for curing defects, but when you consider  
23 that there are new requirements that are going to increase the  
24 number of defects, that's not an overall gain. That's creating  
25 more difficulty for people with disabilities to exercise the

1 right to vote.

2 Q. (BY MS. SWEREN-BECKER) To the best of your  
3 knowledge, could any instruction, guidance, advisory, or other  
4 communication from the Secretary of State or county election  
5 officials supersede state legislation?

6 MS. HUNKER: Objection to form. Lack of personal  
7 knowledge. Lack of foundation. Speculative.

8 MS. SWEREN-BECKER: Excuse me. Dr. Kruse, you may  
9 answer to the best of your knowledge.

10 A. To the best of my knowledge, the law, the plain  
11 language of the law will control. I'm not a lawyer, not a  
12 judge, but the plain language of the law will hold a lot of  
13 weight, whatever the interpretation given by the attorney  
14 general or others, or election officials.

15 Q. (BY MS. SWEREN-BECKER) Do you purport to assess  
16 every barrier that exists for voters with disabilities that may  
17 already exist in Texas election law?

18 A. No. Certainly not. I'm not able to do that.

19 Q. And is it the case that you are only addressing  
20 certain new barriers imposed by Senate Bill 1 in your expert  
21 report and here today?

22 A. Yes, that's true. I'm just addressing the new  
23 provisions.

24 Q. Did you seek to identify any individuals affected by  
25 the various provisions of SB 1 that we discussed today and that

1 UNITED STATES OF AMERICA, )  
Plaintiff, )  
2 v. ) Case No. 5:21-cv-1085-XR  
3 THE STATE OF TEXAS, ET AL., )  
4 Defendants. )

5  
6 REPORTER'S CERTIFICATION  
ORAL DEPOSITION OF  
7 DR. DOUGLAS L. KRUSE  
MAY 3, 2022  
8 (Reported Remotely)  
9

10 I, Carmen Yarbrough, CSR, Certified Shorthand  
11 Reporter in and for the State of Texas, hereby certify to the  
12 following:

13 That the witness, Dr. Douglas L. Kruse, was duly  
14 sworn by the officer and that the transcript of the oral  
15 deposition is a true record of the testimony given by the  
16 witness;

17 That the deposition transcript was submitted on  
18 \_\_\_\_\_ to the witness or to the attorney for the  
19 witness for examination, signature and return to me by  
20 \_\_\_\_\_;

21 That the amount of time used by each party at the  
22 deposition is as follows:

23 Ms. Kathleen Hunker - 6 HOURS - 43 MINUTES  
24 Ms. Eliza MS. Sweren-Becker - 0 HOURS - 12 MINUTES

25 That pursuant to information given to the deposition



1 officer at the time said testimony was taken, the following  
2 includes counsel for all parties of record:

3 MS. Eliza Sweren-Becker, Counsel for LUPE

4 Mr. Sean Morales-Doyle, Counsel for LUPE

5 Ms. Kathleen T. Hunker, Counsel for State Defendants

6 Mr. Ari Herbert, Counsel for State Defendants

7 Ms. Julia Longoria, Counsel for LUPE

8 Ms. Lucia Romano, Counsel for OCA-Greater Houston

9 Ms. Lia Sifuentes Davis, Counsel for OCA-Greater

10 Houston

11 Ms. Lisa Snead, Counsel for OCA-Greater Houston

12 Ms. Jacqueline Villarreal, Counsel for Hidalgo County

13 Criminal District Attorney, Ricardo Rodriguez, Jr.

14 Ms. Shira Wakschlag, Esquire

15 Mr. Bradley R. Prowant, Esquire

16 Ms. Dana Paikowsky, Esquire

17 Mr. Jonathan Fombonne, Esquire

18 Ms. Susan Mizner, Esquire

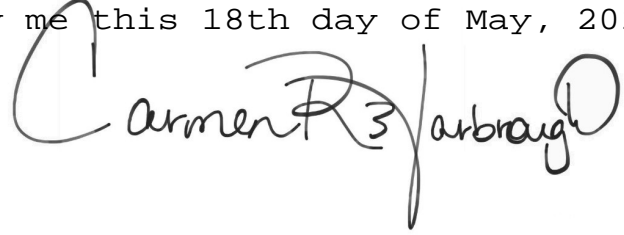
19 I further certify that I am neither counsel for,  
20 related to, nor employed by any of the parties or attorneys in  
21 this action in which this proceeding was taken, and further  
22 that I am not financially or otherwise interested in the  
23 outcome of the action.

24 Further certification requirements pursuant to Rule  
25 203 of TRCP will be certified to after they have occurred.

Douglas Kruse

May 03, 2022  
Page 234

1 Certified to by me this 18th day of May, 2022.

2 

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4  
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